



City of Harrisonburg, Virginia

Planning Commission Meeting

December 14, 2011

7:00 p.m.

Regular Meeting
409 South Main Street

- 1) Call to order, roll call, determination of quorum, and review/approval of minutes from the November 9, 2011 regular meeting.

- 2) New Business

Rezoning – 136/152 West Elizabeth Street (M-1 to B-1)

Public hearing to consider a request from Community Mediation Center d/b/a Fairfield Center to rezone two parcels totaling 35,540 +/- sq. ft. from M-1, General Industrial District to B-1, Central Business District. The properties are located at 136 and 152 West Elizabeth Street and can be found on tax map parcels 35-S-6 & 19.

Capital Improvement Program

Consider recommendation to City Council.

Subdivision Ordinance Amendments Associated with the UDA Grant Project

Public hearing to consider a request to amend the Subdivision Ordinance Sections 10-2-1, 2, 41, 42, 43, 61, 62, 63, and 64.

Zoning Ordinance Amendments Associated with the UDA Grant Project

Public hearing to consider a request to amend the Zoning Ordinance Sections 10-3-24, 26, 55.2, 55.5, 55.6, 56.2, 56.3, 56.4, 56.6, 57.2, 57.3, 57.4, 57.6, 58.2, 58.3, 58.4, 58.5, 58.6, 113, and 115.

- 3) Unfinished Business

- 4) Public Input

- 5) Report of secretary and committees

Proactive Zoning

- 6) Other Matters

Election of Officers for 2012

- 7) Adjournment

Staff will be available Monday January 9, 2012 at 4:30 p.m. for those interested in going on a field trip to view the sites for the January 11, 2012 agenda.

MINUTES OF HARRISONBURG PLANNING COMMISSION

November 9, 2011

The Harrisonburg Planning Commission held its regular meeting on Wednesday, November 9, 2011, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Charles Chenault, MuAwia Da'Mes, Judith Dilts, Alan Finks, Deb Fitzgerald, and Henry Way.

Members absent: Bill Jones.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Vice-chair Fitzgerald called the meeting to order and determined there was a quorum with six of seven members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the September 14, 2011 Planning Commission meeting.

Mr. Chenault moved to approve the minutes from the September 14th Planning Commission meeting.

Dr. Dilts seconded the motion.

All voted in favor of approving the minutes. (6-0)

New Business

Special Use Permit – Fence Height (VMRC)

Vice-chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Institutional. This designation states that these areas are for development by certain nonprofit and public institutional uses such as private colleges and universities, hospitals, offices of nonprofit organizations, community assembly uses and institutions that provide for the shelter and care of people.

The following land uses are located on and adjacent to the property:

Site: Multi-family dwelling units of Park Village, zoned R-3/I-1

North: Duplexes, multi-family dwelling units and Pleasant View Home Group Care Facility, zoned R-3

East: Single-family dwelling, zoned R-3

South: Multiple-family dwelling units of Park Village, zoned R-3/I-1

West: Park View Mennonite Church, zoned R-2

The applicant is requesting a special use permit per Section 10-3-48.4 (8) to allow for a fence of seven-feet in height. The fence would be constructed along the northern property boundary of Park Village, a subsidiary of Virginia Mennonite Retirement Community (VMRC), behind the dwelling units located along Hawthorn Circle, Villa Drive, and Spruce Court.

Park Village provides independent housing for persons aged sixty years and older within the VMRC complex. It consists of 28 single-story buildings, most of which are either three- or four-plexes, along with two apartment buildings, Park Place and Park Gables.

The proposed fence is described as a solid, vinyl fence and would replace an existing wooden fence, which is situated along the northern property line. The existing fence, approximately 665 feet in length, has a height of five-feet to seven-feet and provides privacy for the residents living in the northern most units. At this time the wooden fence, which was constructed in 1987, is in disrepair and needs to be replaced.

The applicant states that the original fence was installed to discourage pedestrian and bicycle traffic from walking and riding between the Park Village units and the adjacent neighborhood. The rear yard area for these units is limited and a fence provides some privacy for the residents. Replacing the old wooden fence with the new, seven-foot vinyl fence would help maintain resident satisfaction while still providing the needed privacy.

Staff does not foresee any negative impact in approving this application. The existing fence, which was constructed prior to code regulations requiring a building permit, currently has a height up to seven-feet along half of the fence line. The proposed fence would be located in the same place as the existing fence and would require a building permit prior to installation. Staff recommends approving the special use permit with the following conditions:

1. The special use shall only be applicable to the proposed fence in this application.
2. There shall be no advertising on the fence.
3. If in the opinion of Planning Commission or City Council, the fence becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Vice-chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked if the applicant or the applicant's representative would like to speak.

Mr. Marvin Nisley said he is here tonight representing VMRC and he does not have anything to add to the presentation. The residents would appreciate the fence for the privacy; given the small backyards and the proximity to the adjacent apartment buildings. I also appreciate your considering our request.

Mr. Da'Mes said by right you would have the ability to install a six foot fence; why choose a seven foot fence?

Mr. Nisley replied that approximately one half of the existing fence is already seven feet and a reduction in what is existing, would make a difference to the residents living there. Seven feet gives some additional privacy for residents within their backyards, or on their decks and patios. We felt that the additional twelve inches, which does not seem like much, would make a difference.

Vice-chair Fitzgerald asked if there were any further questions. Hearing none, she noted for the record that Commissioner Finks would be leaving the meeting at this time (7:08 p.m.). She then asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition to the request. Hearing none, she closed the public hearing and asked for discussion.

Mr. Da'Mes said the concern when you build fences within neighborhoods is how you are separating the neighborhood as far as pedestrian traffic; but, in this situation where the roads end within a cul-de-sac and the way the developments are situated, it does seem appropriate. With that being said, I make a motion to approve the special use request with the conditions provided by staff.

Mr. Way seconded the motion.

Vice-chair Fitzgerald said there is a motion and a second before us now. She then called for a voice vote on the motion.

All voted in favor of the motion (5-0).

Vice-chair Fitzgerald said the request moves forward to City Council on December 13, 2011 with a favorable recommendation from Planning Commission.

Special Use Permit – 1559 Red Oak Street

Vice-chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development and related activities.

The following land uses are located on and adjacent to the property:

- Site: Vacant 2,500 sq. ft. building, zoned M-1
- North: Various industrial businesses, zoned M-1
- East: Various industrial businesses and undeveloped land, zoned M-1
- South: Feed Mill and undeveloped land, zoned M-1
- West: Industrial uses, undeveloped land, and railroad, zoned M-1

The applicant is requesting a special use permit per Section 10-3-97 (10) of the Zoning Ordinance to allow recreational and leisure time activities within the M-1, General Industrial District. Specifically, the applicant would like to utilize a 2,500 square foot building, located at 1559 Red Oak Street, for a training facility related to a strength and conditioning business.

Next Level Athletic Development, LLC provides sports performance training for athletes, as well as personal training for individuals seeking to improve their overall health. Training is offered on an individual basis or in small groups, by appointment only; this would not be a commercial open gym. The applicant has stated that this type of open space facility is exactly what is needed for the training he offers.

If the special use permit is approved, a change of use permit and other necessary building permits would be required prior to operation of the training facility. The applicant has been in contact with the Building Codes Division regarding permits. They have already been granted a modification from the Virginia Construction Code regarding the number of bathroom facilities required in a B (Business) use group. Generally, a 2,500 square foot building for a business use would allow a maximum occupancy of 25 persons, which would then require two separate bathroom facilities. The applicant has received approval from the City Building Official to operate with just one bathroom facility; however, occupancy would be restricted to no more than 15 persons in the building at any time. The reduction in occupancy reduces the number of required parking spaces to two, which should be easily accommodated at this location.

The property is located at the end of a cul-de-sac, within an area that has a mix of small-scale, industrial uses and staff has no concerns regarding the proposed use at this location. Staff believes

it is a positive use of an otherwise vacant building and supports this request with the following condition:

1. The permit shall be applicable only for the use, or a substantially similar use, as requested in this application.

Vice-chair Fitzgerald asked if the limit on the number of bathrooms has been approved for one year only, what happens after the year is up?

Mrs. Banks replied if things go well at this location and the tenant decides to stay, he would need to contact the Building Official and request an extension of this modification.

Mr. Way said when you talk of a substantially similar use as a condition, does that include the idea of appointment only rather than an open gym type scenario?

Mrs. Banks replied yes, most definitely by appointment only.

Vice-chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Mike Martin, 190 Clara Court, said he is the owner of Next Level Athletic Development. Currently I train athletes at different locations; quite often it is over at Eastern Mennonite University (EMU), I also work with some of their teams. It would be great to have my own facility; I think it would help to grow my business. This is a great opportunity and it would be a one year lease, which is enough to see if it works. I have already discussed with the Building Official about the possibility of an extension after a year, and I would probably have to put in another bathroom. The other option would be to look for a different place. I want to give this a try and I appreciate your considering this.

Mr. Way asked whether he envisioned the numbers of the business going up significantly each year.

Mr. Martin said I am only limited to 15, including myself, so that puts a cap on group size. I do not really like to train too large of a group because I feel it is hard for me to do a great job when the numbers are large. So I do not see the group number going up.

Vice-chair Fitzgerald asked if there were any further questions for the applicant. Hearing none, she asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request. Hearing none, she closed the public hearing and asked for discussion from Planning Commission.

Mr. Chenault said I think this is an appropriate use of this piece of property and this building. It is obvious that the applicant has worked very closely with the City and Building Division on this and has made good accommodations to make his use fit in with the building code. With that, I move for approval of the special use permit with the condition suggested by the staff.

Dr. Dilts seconded the motion.

Vice-chair Fitzgerald said there is a motion and a second before us now. She then called for a voice vote on the motion.

All voted in favor of the motion (5-0).

Vice-chair Fitzgerald said the request moves forward to City Council on December 13, 2011 with a favorable recommendation from Planning Commission.

Special Use Permit – 1106 Reservoir Street

Vice-chair Fitzgerald read the request and asked staff to discuss.

Mr. Fletcher said the Comprehensive Plan designates this area as Professional. This designations states that these areas are for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District. Conversion of houses in these areas to office and professional service uses is permitted with appropriate attention to maintaining compatibility with adjacent residential areas in the same manner as described for Planned Business areas.

The following land uses are located on and adjacent to the property:

- Site: Retail use and undeveloped property, zoned B-2
- North: Across the Norfolk Southern Rail Line, professional office and commercial uses, zoned B-2
- East: Non-conforming multi-family units, zoned B-2
- South: Commercial uses, zoned B-2
- West: Across Reservoir Street, Harrisonburg Electric Commission Substation, zoned R-3

The applicants are requesting a special use permit (SUP) per Section 10-3-91 (4) of the Zoning Ordinance to allow a telecommunications tower of no more than 125 feet in height. The property is located at 1106 Reservoir Street, is zoned B-2, General Business District, and is impacted by the floodway and floodplain of the small, nearby tributary. The property is adjacent to the Norfolk Southern Rail Line and the controlled rail line crossing with Reservoir Street as well as across Reservoir Street from one of Harrisonburg Electric Commission's substations. The applicant is requesting to erect a 124-foot telecommunications monopole tower.

The information submitted by the applicant regarding the height of the tower within the packet is inconsistent. A letter states the tower would be 120 feet in height and the engineered drawings of the tower illustrate it would be 125 feet. However, staff has confirmed with Global Tower Assets (GTP) that the main structure of the tower would reach 120 feet in height with a four-foot lightning rod attached to the top, bringing the entire tower structure to a height of 124 feet. The tower would be a galvanized steel finish with antennas of a neutral, non-reflective color owned by AT&T mounted at the top. The tower would not be lighted. At the base of the tower would be an 11'5" X 28" shelter/cabinet owned by AT&T to house the equipment associated with their antennas. The tower facility would also include four additional areas for future co-location tenants. All of this would be within a 2,304 square-foot area of the subject property, enclosed by a six-foot chain link fence capped with barbed-wire, leased by GTP from the property owner. Currently, the lease area is shown within the two properties owned by Mr. Strawderman; however, although not required, he is planning to adjust the property boundary by moving the lot line approximately 137 feet to the southwest, closer to the existing structure at 1106 Reservoir Street.

GTP states this tower is needed for an increased level of in-building penetration, to offer a solution for off-loading capacity from the surrounding AT&T antennae locations, and to bring 4G services in the form of LTE (Long Term Evolution) technology to the City.

Staff contacted the Harrisonburg Rockingham Emergency Communications Center (HRECC) to see if they had any problems related to this tower location. The HRECC has an 800 MHz simulcast timing path that travels from its equipment on Tower Street to the Stone Spring radio site located near Stone Spring Elementary School. The proposed tower is close to this path, but they are comfortable in stating that if this tower were erected where proposed, there should not be interference with the HRECC radio system. GTP further stated they would operate within the 700 MHz and 1900 MHz frequency bands, which would not interfere with HRECC's frequency.

A letter included within the packet of information (with the "Sabre Towers & Poles" letterhead), describes the tower is highly unlikely to fail, structurally, in a wind event. However, if a wind event should occur beyond the built-in safety factors, the pole should buckle, or bend, in the area of the poles highest combined stress ratio in the upper portion of the monopole, and therefore fold over upon the portion below the failure location.

Although this property is zoned B-2 and almost completely surrounded by B-2 zoned properties, the Comprehensive Plan designates this parcel and many of the surrounding properties for Professional uses. The surrounding properties that are not designated for Professional uses are designated Medium Density Residential—many of which are also zoned R-3, where the uses conform to the zoning classification. The long term land use designations of the subject property and surrounding properties are not compatible with such an obtrusive structure. Staff recognizes this is a busy area of the City with nearby commercial uses, yet such circumstances do not support approval of this SUP. Staff believes approving this request would not do justice in protecting the private property rights of the nearby property owners.

Staff appreciates GTP's plans to provide additional space for future tenant co-location possibilities. We also understand that such infrastructure is needed to provide stronger signal strength and capacity and connectivity to our City; however, we believe such a use would be incompatible with the uses in the surrounding area. Staff recommends denial of this application.

If, however, it is decided to approve this request, staff recommends the following conditions be attached to the permit:

1. If the telecommunications equipment ceases to be used for more than 12 months, all equipment, including the pole, shall be removed within a timeframe determined by the City at the owner's expense.
2. Only equipment as shown on the submitted drawings, or equipment substantially similar to such equipment, including co-locations as shown, shall be approved under the issuance of this special use permit. Future tenants shall verify with HRECC that their additional telecommunications equipment will not interfere with HRECC's equipment.
3. Placement of advertising of any kind is prohibited on the antennas and equipment.
4. The pole and antennas are to be a neutral color that blends in with the surrounding area.
5. The fence shall be maintained so as not to appear dilapidated or in poor condition.
6. Evergreen landscaping shall be planted and maintained along the exterior of the fence to provide a semi-opaque screen. Such evergreen planting shall be six feet in height when planted.
7. If any of the above conditions are found to be in neglect, a certified letter will be sent to the property owner, at which time the provider will need to bring the equipment into

compliance. If the equipment is not brought into compliance within 10 days, the special use permit will be held null and void and all equipment approved under issuance of this permit shall be removed within a timeframe determined by the City at the owner's expense.

8. If in the opinion of Planning Commission or City Council, the equipment becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit. If the permit is revoked, all equipment shall be removed within a timeframe determined by the City at the owner's expense.

Vice-chair Fitzgerald asked if there were any questions for staff.

Mr. Da'Mes said you mentioned that there is an emergency system and tower nearby; does that tower have co-location capability, and was it checked on?

Mr. Fletcher replied yes, it has co-location capability and I believe the tower is full. There is the possibility of co-locating on the water tower, and it does have availability.

Mr. Da'Mes clarified and said the water tower is available, but the tower is not.

Mr. Fletcher said correct. These two locations are right next to one another on property located along Tower Street.

Mr. Chenault said I am guessing that the water tower location does not provide a service area location that is needed in this case.

Mr. Fletcher said I do not believe that the location of the Tower Street water tank and tower was in the area that the applicant needed. The representative for this request will be speaking to you regarding that information.

Vice-chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Lynn Koerner, 3126 South Ox Road, Edinburg, said he is a consultant working for the interested parties in this request. The proposal before you this evening is for a 120-foot, monopole structure, with a four-foot lightning rod; for a total height not to exceed 125-feet. All related equipment would be located within the fenced compound. This tower is designed to provide a platform for AT&T and their coverage, to address coverage issues and capacity issues. Capacity is when surrounding sights become overused; therefore, the more data that is transmitted and the more calls that are made, the more the coverage shrinks. Then you get the dropping of calls and so forth.

AT&T provided us a random search area with the instructions that something (tower, co-location, etc.) was needed in this area to address capacity issues. Mr. Koerner then discussed where the existing AT&T sites were located throughout the City. It is also my understanding that there has already been contact made from an AT&T consultant to the City's Emergency Services and it has been determined that the tower is full, but they are in some discussion about locating a site on the water tank. Even with the proposed future site at Tower Street, we still need this location to fix the problem of dropped data. This site that we are proposing is driven by several factors, one of which is the increased level of the in-building coverage and penetration in this specific targeted area. Secondly, this is a solution for off-loading the capacity from the other sites.

Today's environment of the wireless system is data driven and the data just "eats-up" the band width and shrinks our coverage. Today's customers seek the ability to use their wireless devices in their cars, homes, businesses, shopping, restaurants, etc. and the growth of the smart phone, tablets, gaming devices and so forth, cause problems with capacity issues and more and more usage needed. We have evolved past the idea of using a phone just to make a phone call.

In 2010, the data traffic was three times greater than the total global internet traffic in the year 2000; that is just data traffic, not calls. There are also statistics that indicate 31 percent of all phones in the United States are smart phones and more applications (as apps) are coming out every day for smart phones. With the increased use of the smart phone and tablets, data traffic is only going to increase. Another big draw on the capacity is the video traffic; which has increased to about 52 percent of the total traffic experienced on these sites. Here are some numbers that were randomly pulled from the October 2011 stats on the Hampton Inn site and the sectors that point towards our targeted area. On Sunday, October 1st, there were 874 calls, with 106 dropped calls for an 8.2 percent drop rate. On Wednesday, October 4th, there were 691 calls, with 77 dropped calls for an 8.9 percent drop rate. On Monday, October 24th, there were 820 calls, with 97 dropped calls and on Friday, October 28th, there were 904 calls, with 106 dropped calls for a drop rate of 8.5 percent.

Mr. Way questioned where the area was that was dropping these calls.

Mr. Koerner explained that these statistics were being pulled from the cell site on the roof top of the Hampton Inn.

Mr. Way asked if these statistics were specific to the target area being discussed tonight.

Mr. Koerner replied yes they are. The calls may be coming from Barnes and Noble or the Valley Mall, or the Hardees right up the road from the site, but the statistics we pull reflect that at this area is where the calls are dropping. To fix that situation is to put a site in this area.

Mr. Way said you determined that this location is the best in order to fix the problem?

Mr. Koerner said we could go through all the stats and see that there are dropped calls from numerous sites; I just pulled stats from this particular site.

Vice-chair Fitzgerald said the point being is the aim of this proposed tower is to improve the dropped call percentages from all sites, not just the Hampton Inn site.

Mr. Koerner replied yes, a site in this target area will fix the problem. We have to look at it as if each site is a 60 watt light bulb, glowing brightly throughout the City. Put those bulbs under an extra load which is pulling from them, and they naturally start to dim. This creates small holes in the middle. That is what happens when 25 people get on the phone; it puts a load on the tower site. Put 50 people on the phone and it pulls even more signal and the coverage area begins to shrink. As it shrinks it opens up a hole. What we are trying to do is fix the hole so that people have the experience they are paying for.

Mr. Way said that does make perfectly good sense. Do you have any information as to what that percentage of dropped calls may come down to if this tower is in place?

Mr. Koerner said typically we would like to get it to zero; but, a very minimal percentage is what we are working towards, eight to nine percent is unacceptable. It is somewhat like if you were running a business and on a monthly basis ten percent of your customers are not showing up or not buying.

Mr. Da'Mes said in describing the situation you are talking about the amount of data; data in the form of telephone calls is relatively minute compared to texting or transfer of digital media. When you say "drop rate" does that refer to drop of calls or drop of communication?

Mr. Koerner said it is drop of communication or connections.

Mr. Da'Mes asked if it was a delay in connections or a drop in connections.

Mr. Koerner replied that the report just refers to drop; whether it is considered a call that was unable to be made or one that was terminated prematurely, I do not know.

Mr. Da'Mes said in the sequence of things does a phone call supersede a data transfer?

Mr. Koerner said I do not know the answer to that question.

Mr. Da'Mes said I asked because it would make more sense to allow the phone call through and delay the text; I am sure the technology to do so is available.

Mr. Koerner said much of what you refer to as data is the transmission of photos, PDF's, using applications and so forth; it is all using that one signal.

Mr. Da'Mes said to clarify it is not just dropped calls.

Mr. Koerner replied it is drops, not just necessarily a phone call. Typically, when the system is really overloaded you can get through with a text, where you cannot with a phone call.

Mr. Koerner continued by saying that another statistic shows that approximately 30 percent of all households are going wireless only. I am sure that in Harrisonburg, with all the students and college rental areas, that this number is probably higher. This also contributes to the drain on our system. In 1996, there were 38.2 million wireless subscribers in the United States, in 2011 there are 322.9 million and the trend for texting has increased to 196 billion texts per month.

It is our opinion that good, quality, reliable service provided by additional coverage and capacity in this area is necessary for those living, working, and visiting this area and in Harrisonburg. The standard mission of the City's Department of Economic Development as stated within Chapter 13 of the Comprehensive Plan is to "increase the number of higher paying job opportunities available in Harrisonburg by attracting new businesses to this community and assisting existing firms to expand locally." A stated goal is to "increase technology-related job opportunities in the City", with the objective being to attract technology and/or telecommunication firms. We maintain to assist in attracting these firms the desire should be to ensure the presence of reliable wireless service. In Chapter 12 of the Comprehensive Plan, Community Infrastructure, Services, Safety and Health, the paragraph reads "Telecommunications: The City is served by a number of providers including Verizon, NTelos, Comcast and Shentel. These providers maintain a critical infrastructure that is vital to the quality of life and economic development of the community. These systems are deployed throughout the City so that the broadband, wireless, and emergency communications are met. Along with other infrastructure in the community, these facilities are deployed in a manner that maximizes customer service, while minimizing the proliferation of towers and duplication of utility poles. The proposed tower is located in an area that is adjacent to a sub-station, and to railroad tracks, and just to the west are professional offices. The nature of the area to the east is not a single-family home residential area, but a multifamily housing area; which is also a revenue driven market and fits into the category of business and the professional aspect of the area.

You cannot hide a tower like this; but, we feel that placing this in this location is a good placement for it because of the surroundings. As was mentioned, the tower structure is not going to be much taller than the existing 75-foot poles on the site now, especially with the elevation changes. We maintain that the tower will blend in with the area. In our search for a site we did ask about the use of the power transmission lines along the railroad track within this area. Harrisonburg Electric Commission does not lease their poles out for the use of telecommunications.

This proposed site will be made available to additional carriers and we have reached out to two, Shentel and Ntelos, and they both show some interest in the area. If you recall Shentel proposed a tower several years back along East Market Street at the Rockingham Group; ultimately, they ended up locating on the Tower Street tower. They are on the Tower Street location and they still have a hole in this area that they are looking at.

As part of AT&T's outreach to the area, we like to send our own letter to adjoining property owners, indicating what is proposed and a phone number they could call if they had any questions. We did not receive any responses from the letters that we mailed out.

One final note, the proposed tower is positioned to provide existing and future land uses in this area of the City with telecommunications needs. If there are any questions at this time I would be pleased to answer them; and if I could, I would like to speak briefly after anyone else has commented on the proposed project.

Mr. Way said you wrote to the adjoining property owners, did you also give letters to or speak to the residents in the area?

Mr. Koerner replied only to the owners of the properties, each resident did not get a letter.

Vice-chair Fitzgerald said I have a sense of what this would look like; could you describe to me what it sounds like for a persons living relatively close?

Mr. Koerner said there is the equipment noise; from the tower itself there is nothing. AT&T has a building which contains an air conditioner unit on one end, so you hear the humming of the air conditioner when it is running. In emergency situations where there is a power outage, AT&T may bring in a generator. Otherwise there is no noise.

Mr. Way said regarding the safety question, explain how this tower would fall onto itself and not onto other properties in close proximity.

Mr. Koerner said we make sure these towers are not placed right next to a residence. These monopoles have anywhere from a four to five foot base with 25 or more bolts holding the base in place. The sections come in 20 to 30 foot sections and they are slip-jointed together on this base. Therefore, the weight of it secures it to the base. These sections are designed not to tip over, but to collapse upon themselves; even a lattice type tower is designed in this manner. The towers with the guy wires, where one of the wires is damaged, will fall over because the other guy wires are pulling it over.

Dr. Dilts asked if any thought was given to something creative with the monopole; for instance, I have seen one that looks like a pencil. I have not spoken with anyone on Planning Commission about whether that would mitigate some of the concerns; but, I wondered if something that is in a sense more artistic might be worth pursuing.

Mr. Koerner said we would entertain any recommendations; but, the concerns would be with the influx of the Fourth Generation and Long Term Evolution (4G and LTE networks) and the towers

you are describing – the number and type of antennas that need to be installed to make that system work create real problems when you try to put them inside that type of tower. As an example, there is an existing site that has three of the panel antennas on it, in order to upgrade that site to be compatible with the LTE and 4G you need to add six additional antennas to the site. On a structure like the proposed one, where you have an antenna array you can mount new antenna and get that. So, if AT&T is on top at 120-feet and you have Verizon at 115-feet and Shentel at 100-feet, they can all fit on that one tower. If you build this tower all enclosed and AT&T needs 120-feet, the areas that are below the 120-feet that are vacant for co-locators on an exposed tower are now not usable because AT&T is needing to use them. Now you have a tower that other carriers would like to be on but cannot; you could have a proliferation of towers.

So to answer your question, yes there are methods of screening and tower designs that can be utilized. Is it practical from a standpoint of this Commission to recommend restriction to that type of structure which then would constitute additional tower structures coming before you? We feel this site and where it is located, being minimally above the existing infrastructure that is currently there, will not be readily visible and obtrusive to the general public and the area. It is a fit for that type of neighborhood.

Mr. Chenault said you discussed signal penetration and that is interesting and important to me. Fire and rescue, and police often have an occasion to resort to cell phone use when indoors to communicate to one another; even though we do have a sophisticated communication system for the City. Of course that signal penetration becomes very important in some circumstances. Am I to understand that this would aid in that type of signal proliferation within a structure? I think more and more with cellular and wireless devices, signal proliferation for public safety is becoming an important element of that. So will this aid in that?

Mr. Koerner replied yes and explained how the provided proliferation maps show the change in capacity coverage.

Mr. Way said there is an affidavit provided from a Mr. Rosenfeld, Site Acquisition Specialist, who states there are other property owners that are interested in working with AT&T as a location site for this area. What are the particular benefits of this site versus some of the other ones looked at?

Mr. Koerner said with each site looked at you try to find a site that blends in as much as possible with other things sticking up in the air, hopefully as far away from traffic areas as possible. If you try to locate in a parking lot you do not want to take up leased area from an existing tenant. Access becomes an issue, you do not want to impede the flow of traffic, but you do not want to impede access to the actual tower.

Mr. Way asked about roof-top installation.

Mr. Koerner replied one of the sites looked at for this proposal was the roof-top of Holiday Inn. The radio frequency (RF) engineers did not accept that as a viable option because it was too close to an existing site. The RF personnel are the ones who make the determination of which area is the best, or the area that will work. Then, it falls to where can you best place that site for purposes of: Is it allowed? Does it meet setbacks? Is it far enough from adjacent buildings? What are ordinance requirements?

Mr. Da'Mes said what is interesting about this location site is the fact that it is in a low lying area versus locating it at a higher point where you might only need 80-feet to be equivalent to the 125-

feet from the lower point. There are buildings within this vicinity that could possibly accommodate such a site.

Mr. Koerner said I do not know if contact was made with all the property owners regarding co-location, or even if it was feasible to locate a tower on these structures.

Mr. Da'Mes said a roof-top would not allow for multiple co-locations, where as a tower would, so the driving force behind creating a tower is that you create further income by having co-locators to off-set cost.

Mr. Chenault clarified that a roof-top could have multiple co-locators.

Mr. Koerner said in this case the tower is for AT&T, they need a site, the site acquisition personnel go to the obvious surrounding areas and research building roof-tops. It is much easier to work a deal with a property owner to go on an existing building or structure, than it is to go through the entire zoning process. When AT&T realized they could not find anything for co-location, they contacted Global Tower and said we want a structure here.

Vice-chair Fitzgerald asked if there were any further questions for Mr. Koerner. Hearing none, she asked if there was anyone wishing to speak in favor of the request.

Mr. Butch Strawderman, 4010 Traveler Road, said he is the owner of the subject property. I did go and speak to as many of the adjoining owners as possible. I did speak to two owners that I felt may oppose this request, they are Dr. Zapanta and his wife who own the medical complex to the east, and Stephanie Brooks who owns the Copperstone Building Complex. Neither had any concerns, nor are they opposed to the tower. I have an e-mail from Mrs. Brooks that I would like to present to you. Today I spoke to the owner of the Trim Runner business, Mark Scafidi; he has absolutely no opposition. While I was there I also spoke with the taco truck owner. I did go across the street and speak with some of the tenants that reside in the nearby townhomes; there was somewhat of a language barrier. The gentlemen that bought those townhomes basically bought those as an investment, a cash flow. It is basically a commercial business for him; it is very transient housing, maybe a year or two. Of the tenants I was able to communicate with, no one was opposed to what is proposed.

If you have visited the proposed location, you would notice the larger towers already there, the numerous lines going across the area, the railroad tracks, and the power station. Because of the elevation change I do not think that this tower would be any higher than what already exists. I truly do not see how this tower would be more of an eyesore from what is there.

Vice-chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request.

Mr. Ted Byrd, City Council member, said he was not speaking in favor of or opposed to the request; but, he did have a question and comment. From this view shed could you identify the structures that exceed the mean feet above sea level? The perspective we have been given shows how this looks at this location, but if you go across the interstate I believe there are structures that actually exceed this height – those structures being the lights at the JMU soccer fields and possibly even the new library. So that is my question, are there structures in this view shed that actually exceed this height from the top?

Mr. Fletcher said staff will look into obtaining that information.

Vice-chair Fitzgerald said is there anyone else wishing to speak. Hearing none, she asked Mr. Koerner for closing comments.

Mr. Koerner said I would like some clarification on item six of the conditions. We want to screen the base of the tower; screening it with trees that are six foot tall at planting would be infringing on a sewer easement and into a parking lot.

Mr. Fletcher said you can plant in those areas, you can plant in an easement and the root base does not dig down into it.

Mr. Koerner said we do not want to shrink the lease area because that may limit any co-location opportunities. On the side facing Reservoir Street, possibly we could do a privacy fence or something like that. We do not have any objections to screening, but I just want to clarify that it might be better to have something other than trees. I just wanted to let this be clarified now so that we do not have to go back through the process again at a later date.

We feel that the proposed monopole structure and related facility is cited in a location that will have minimal negative impact on the surrounding area and surrounding businesses. It is in fact compatible with the surrounding area and businesses. Wireless infrastructure is critical to the area, just as utilities such as substations and transmission lines. The proposed site is unmanned and will not present any traffic increases for vehicular traffic on the surrounding roads. We feel the site is consistent with planned growth and planned growth calls for the development of infrastructure. At this time I would like to ask the Planning Commission for their support and approval of this application for a special use permit for the tower.

Vice-chair Fitzgerald asked if there were any other comments or questions. Hearing none, she closed the public hearing and asked Planning Commission if there was a motion.

Mr. Way said I think that the general principle of having more telecommunications infrastructure is clearly an immensely valuable thing for the City. It is somewhat of a no brainer that we want to have more ability to be networked in the new ways that have been spoken about tonight. I think if we want to be welcoming to businesses, to new technologies, and industries in the City, then clearly you have to have the telecom infrastructure to do that. That is what makes this a bit of a tough case. We look at the Comprehensive Plan and it says that the area is identified as a professional area and you could very much argue that having better telecommunications infrastructure helps professional endeavors. However, from a land use perspective I do not think it is fitting with the idea of a professional development. This idea that the area is not as scenic as it might be, I think is a definite issue; but, one could look at it the other way and question do we want to compound that problem. And let's think about the development of Reservoir Street as becoming more of a major thoroughfare and we might want to think about keeping open the possibility for a larger scale professional development in the area that this tower might impinge. The final point that makes me hesitant about this is that this area is identified in the Comprehensive Plan as being an area where a greenway park is supposed to be coming through and this tower might be going in the opposite direction of greenway. I can see the definite professional technological benefits of this, but I can also see some of these as an antagonism to what we have collectively set out as a vision for that part of town.

Dr. Dilts said part of the reason I brought up the idea of a pencil-looking tower was that where it is located it sits up on a hill that is in amongst apartments and single-family homes. As a pencil, it was a way for AT&T and the City to get the kind of telecommunications potential that was needed,

but to also make it something that was eye-catching, artistic, and a bit of whimsy. In this case it recognized the City's commitment to education. That is why I was pushing the issue of the pencil. You are discussing a greenway in this area, if you had some type of tower that was a bit whimsical and interesting, different from a stark tower with antennas.

Mr. Way said I am 100 percent supportive that we should be having much improved telecommunication infrastructure; but, I wonder if there is a better way of doing it. Perhaps on more creative grounds, as Dr. Dilts suggests, or possible other locations or roof tops.

Mr. Da'Mes said that brings me to the question of the enclosed structure. Is there any information that we could acquire that would tell us about these type structures? I am kind of baffled that the City does not require a bit more of artistic look or preference to camouflaging these types of structures. We had this same dilemma two years ago when we looked at a tower site along East Market Street and eventually they were able to locate elsewhere. I can think of locations in this area, like the tennis court's light poles, and wonder if all options have been exhausted. My question for staff is if there is any way we can educate ourselves on these types of issues?

Mr. Fletcher said regarding your comment on co-location sites, that is a question staff was asking too, and we never got an answer. Antennas can be designed in ways that they can go on the side of buildings where they are almost invisible. The Holiday Inn has panels on the sides that are painted the exact same color as the hotel and you do not even know they exist. There are ways to hide certain structures. Something that has been discussed before is ordinances that further control these types of things; it is something that can be investigated further.

Mrs. Turner said this can be investigated further, but, staff is not going to be able to reach the expertise that Mr. Koerner has on something like this. I do not want to give an impression that staff will be able to come back here and tell you in our expert opinion whether or not this particular facility can be disguised as something else. We would have to have a consultant on retainer with the City in order to be able to give you some type of analysis like that.

Mr. Chenault said I am going to move that we approve the special use permit with the conditions requested by staff. I think it has been amply demonstrated, the advantages that the necessity of this tower creates and answers. It makes sense and I feel it has been very well demonstrated by the applicant here tonight, particularly the penetration issue. That is a known hazardous quantity in public safety that is becoming a bigger problem as time goes by. These types of facilities can help answer that.

I think we tread on a slippery slope when we as a Planning Commission try to start exercising our technical curiosity beyond the point where it becomes part of the planning process. Obviously expert analysis has been done by the companies and obviously they have their own agenda; but, I know from experience that if they could locate this on the roof of a building, they would do it. It is much cheaper and it makes common sense to do so rather than build a tower. Secondly, sometimes what people forget, is when you have towers you have the associated equipment that goes with them and there are a lot of roof structures that would not accommodate that load, especially on today's type of construction. You will see a lot of the co-location on older buildings, like the bank buildings downtown, but they are brick, mortar, and steel.

As far as the uses that are at the site now, and what is going to happen in the future, I do not think we know what is going to happen in the future. We have just finished a new rewrite of the Comprehensive Plan and for me personally, I do not see this tower as being incompatible with the

existing uses or with the appearance of the existing uses. I do see it as an issue in single-family neighborhoods, duplex neighborhoods, cemeteries, and parks; but, some localities encourage this type of development in parks. I wonder if you ask the folks that live in this area would they rather have the tower and have better cell phone coverage or not have the tower and having to deal with the coverage they have. I suspect that most people would say they would rather have the tower. This is an entirely rental area on this entire side of the interstate. This is certainly no worse than the concrete poles that go down the railroad track. I appreciate the comment about the greenway park through this area, but the last time that was looked at the cost for relocating and doing that was over 100 million dollars. Unless the railroad leaves the area, we are not going to see that greenway happen; therefore, sometimes we have to deal with what we have, rather looking too much in the crystal ball. When I asked myself where else this could be, sometimes you just need to put on some blinders and look at it from a common sense standpoint. This may be the best place for it.

With that I move to approve the special use permit with conditions as provided.

Mr. Way seconded the motion.

Vice-chair Fitzgerald said there is a motion and a second; she then asked if there were any further comments.

Mr. Way said I would like to reiterate that I have very mixed feelings on the issue; I can see both perspectives.

Mr. Chenault agreed.

Dr. Dilts said I find Mr. Chenault's argument about penetration, particularly in the case of public safety, an interesting argument. Think about what happened with the earthquake and how difficult it was to get any type of phone call through.

Vice-chair Fitzgerald called for a roll call vote on the motion.

Commissioner Dilts – yes.

Commissioner Way – no.

Commissioner Da'Mes – no.

Commissioner Chenault – yes.

Vice-chair Fitzgerald – yes.

The motion to approve the special use permit with the proposed conditions will move forward to City Council on December 13th with a favorable recommendation (3-2).

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said in your packets this month are two proactive reports; the September report, which would have been part of the October packet, and the October report. In September, inspectors were

out in the Court Square area of the City where two violations were noted. Both were for discarded materials.

The Bluestone Hills/Valley Mall area was inspected as part of proactive zoning for October 2011. There were 31 violations consisting entirely of sign ordinance violations. Next month zoning inspectors will be in the Preston Heights area; which will also wrap up another three year cycle of proactive zoning.

Other Matters

Proposed Parking Lot Landscaping Ordinance

Mr. Fletcher said if you recall several months ago the Planning Commission said they wanted to move forward with looking into a new landscaping ordinance and before you tonight are the five or so pages that comprise the proposed ordinance. He then began presenting and discussing information as was shown on a Power Point. This comes directly from the City Zoning Ordinance, Section 10-3-25, Subsections 3 and 4, which is our landscaping ordinance as it is today. The proposed ordinance builds off of some of the information found within these subsections and I would like to review a few existing statements found within the current regulations that we have kept in this proposal.

The first states all parking lots, other than industrial sites, requiring more than 10 parking spaces shall include a well defined and well maintained landscaped areas equal to at least 15 percent of the total area to be used for parking, maneuvering and driveways on the site; we have kept the 15 percent. Another item we kept was the landscaping border of 10 feet in width that has to be around the properties. Our current regulations say that you do not have to do this border if you put up a wall or fence and we have kept elements of that also. Another component we kept is that when you are counting your landscaping area it has to be within 30 feet of the parking, maneuvering, and driveway area. There is also the requirement within subsection 4, that within shopping centers if the 15 percent landscaping requirement cannot be met, then parking rows should be divided with landscaping islands. These are some of the elements that we have kept from the current regulations.

Moving forward with the new language, the first item is "What is landscaping," currently we do not define this. What the proposed language says is that it must be living vegetation; it cannot just be rocks or mulch. Other definitions now included are: *landscaping island*, *outdoor display areas*, and *parking bay*.

In the proposed language we discuss the 10-foot landscaping borders and the required tree planting. The proposed language reads that all parking lots shall be separated from all public street right-of-way with a 10-foot landscaping border. This area cannot count towards the 15 percent landscape requirement and you can no longer put up a fence or wall to remove the 10-foot requirement. There is also a 10-foot landscape border required around the sides and rear of the property as well; this would continue to be an option of 10-feet, a wall or fence. Along with this we have proposed a minimum fence/wall height requirement of 3 feet.

Mr. Way asked if there are recommendations about location of the parking lot in relation to the building in terms of encouraging developers to put the parking lot behind the building.

Mr. Fletcher replied what this landscaping parking lot proposal is doing is two-fold. One it is trying to alleviate the viewscape of just looking at a parking lot. The required tree planting along the street, within the 10-foot border, helps to buffer and screen parking lots, as well as gets some street

trees in place. The trees have to be planted within areas adjacent to the parking lot and public street right-of-ways. Within the proposed landscaping ordinance you have four different options from which to choose when planting in the landscape border.

Mr. Fletcher reviewed the different planting options within the landscape border and noted that definitions of the various trees and shrubs were also proposed. He stated that also within the definitions we have defined *caliper*, because there is always discussion about what the caliper means. How you obtain the caliper is you measure the circumference of the tree, divide that number by π (3.14), and that gives you the caliper.

Mr. Fletcher continued by saying that after discussion with other interdepartmental staff, it was decided not to list specific species that could be planted within the border.

Mr. Da'Mes said perhaps you could say preferred species or native.

Mr. Fletcher replied yes we could as our ordinance already does that in our existing landscaping regulations within subsection 3, where it states it is suggested to use regional species.

At this time Mr. Fletcher presented to the Planning Commission different examples throughout the City of what the 10-foot landscaping border looks like.

Mr. Way commented that the landscaping was in the businesses' best interest to do; it appears to add value to the overall property.

Mr. Fletcher said in your landscape proposal are some images of parking lot scenarios that, if this proposal is approved, these images would be placed into the Design and Construction Standards Manual (DCSM), as examples of design guidelines for the landscaping ordinance. He then reviewed each scenario and how it applied to the proposed ordinance.

Some of the miscellaneous items that are being proposed include: any area within the parking lot that is not being used as parking, maneuvering, or travel ways, should be landscaped; all landscaping should not interfere with the DCSM standards for sight distance; required landscaping is suggested to be in accordance with the International Society of Arboriculture; no longer would it be allowed to display goods within landscaping islands or the required 10-foot landscape border (this is often seen at auto sales businesses); and he noted that it is the owners responsibility to take care of any dead or missing required vegetation and that it must be replaced within a year upon notice.

I want to point out an exception for parking garages, proposed within the new ordinance. We recognize that parking garages would function and look quite different from an open parking lot. They are buildings, they are not parking lots. Rather than having landscaped areas that are based upon 15 percent of the parking lot, parking garages would be based upon 15 percent of the total floor plate of the building.

I would like to review non-conforming parking for existing buildings. Imagine a shopping center that is being added to; the existing shopping center already meets and exceeds the required parking, but does not conform to the proposed landscaping standards. What we are proposing is that the addition can be constructed; however, any additional parking that is installed, whether it is required or not, the landscaping would need to be done proportionate to the additional parking. If the property currently has a landscaping border that is at least 5-feet in width, any addition to the parking lot would then put the property into the threshold of having to plant the street trees. This

requirement is not proportionate to the new parking; it would be for the entire parking lot width. This would help to attain some of the street tree objectives noted in the Comprehensive Plan.

The proposed ordinance provides information on what a developer would need to submit to meet the landscaping plan. This would include the calculation of the required landscaping area as showing that the required 15 percent is met would be needed. As well, the location, size, and schedule of plantings and if existing healthy trees or wooded areas are being preserved to count towards the 15 percent, would need to be shown.

If this is approved, there are some other areas of the Zoning Ordinance that we are recommending to be amended as well. First would be to amend the by right use of parking lots within the B-1, District; this would be to get rid of the separation of public versus private parking lot and to remove parking garages as a by right use altogether and make it a special use. Along with this change we are recommending adding parking garages as a special use to R-6, R-7, and MX-U. Parking garages are already permitted by right in R-3, R-4, and R-5; this would require applying the standards of the parking garage exception proposed in the ordinance.

Mr. Fletcher continued saying there would be an addition of specifications and guidelines associated with the Certificate of Occupancy (CO). Within Section 10-3-11, proposed item (c) would allow for a surety to be posted if one does not, or cannot, complete all of the required landscaping at the time of CO issuance. Within Section 10-3-17, which lists all the items necessary for comprehensive site plan review, we are proposing to add item (9) to include all details for meeting landscaping requirements.

The proposed ordinance works towards achieving Goal 8 of the Comprehensive Plan, which is to preserve and enhance the City's natural resources and encourage development that is compatible with nature and Objective 8.4, which is to preserve and expand green spaces and tree planting in the City. The ordinance is utilizing one of the Strategies by considering adding street tree planting and other land landscape requirements for new development. At this time Mr. Fletcher asked if there were any questions.

Vice-chair Fitzgerald asked what comments did you get back from the people that you sent this proposal to.

Mr. Fletcher said there was an interdepartmental review of which we had some feedback and made changes. Then we sent it out to the Downtown Landscaping Committee and to the Shenandoah Valley Builders Association (SVBA), who then made it available to all of its members. We only received five comments, one of which was completely opposed and did not want any more regulations. Another comment was about the reduction in size of the landscaping island; which we actually made changes to after receiving the comment. The remaining three comments (one being a landscape business owner) were in favor of the proposal and said it made good sense.

Dr. Dilts asked where does the 15 percent come from; knowing that when you start paving over everything and buildings you change the whole ability of water to seep into the land and be reused.

Mr. Fletcher said to be honest I have no idea where the 15 percent requirement comes from. The 15 percent requirement has been in the ordinance for a long time.

Mr. Way asked whether these amendments that are suggested reflect what other municipalities have done or are doing.

Mr. Fletcher said yes. This is something we have looked at for several years and we thought whenever the time is right we would propose the ordinance. We did investigate what other municipalities were doing with landscaping regulations and picked qualities that we liked from some ordinances.

Mrs. Turner said we tried hard to stick with the 15 percent base, so that we were not exponentially increasing any current requirement. Many localities do a lot more than what you see here.

Mr. Fletcher said the biggest difference in the proposed and what is existing is the living vegetation. No longer can you have just grass, mulch, or rocks.

Mr. Da'Mes said during the Comprehensive Plan review I had a problem with the 15 percent being too low. I understand that it is a baseline and normally people exceed it; but, then I see so many examples around Harrisonburg that are just too much pavement. It is not aesthetically pleasing and it is not representative of "the Friendly City." Do we distinguish within 10-3-25 between a fast food parking lot and a shopping center parking lot? Could we consider 15 percent when up to 100 parking spaces; but beyond 100 spaces you must provide a greater percent landscaping? When I think about developments that build a certain square footage building and yet they vastly exceed our requirements for parking spaces; why do they do that and can we regulate that?

Mr. Fletcher replied there is a lot that goes into private businesses having their own standards for parking and meeting the demands for their clients. What you are asking about is known as "capping" parking and that is something that we did discuss, but decided we did not want to get into. When you put a cap on parking, you could limit who may decide to develop in the City. Some businesses choose not to come to a location if they cannot get the total amount of parking they want.

Dr. Dilts said I am concerned about the runoff and stormwater management.

Mr. Fletcher said the quality and quantity management is something that is controlled through the DCSM and State regulations. We have stormwater and erosion and sediment control regulations that must be abided by. This landscaping proposal would not meet some of the quality issues, but it would certainly help.

Mrs. Turner said what Mr. Fletcher said is that the City already has some requirements and we also use the State requirements for water quantity and quality that leaves a site. We are not doing this ordinance to further regulate that aspect of the site development.

Dr. Dilts said but what happens is when you pave over an area the runoff is immediate. When you use some type of porous type ground area, the runoff can seep in. So when you begin laying out these great swaths of pavement and you do not provide for runoff, you are now creating problems downstream.

Mr. Fletcher said there are two different issues going on here. Water quantity has always been regulated, water quality is becoming the bigger issue and new standards have gone into place for this. In speaking with one of the engineers in our department about stormwater management best management practice (BMP) areas; he explained that many developments were going to go to these independent individualized BMP areas. These BMP areas would easily fit into almost all locations. Another thing that we originally considered was requiring the landscape islands to be curbed; but we removed that because it gives developers the flexibility to do rain gardens. We did not want to be so regulatory and say that you had to provide for all this, we wanted flexibility.

Mrs. Turner said back to the concern expressed earlier about developments that provide more parking spaces than required and having them meet more of a landscape requirement than the 15 percent. For larger areas this ordinance is going to be more of a requirement than the base 15 percent. Remember for every other parking bay you will need to have the nine-foot landscape island. If you think about the visual impact of the parking area, those nine-foot islands will go a long way and the larger the parking area the more there are.

Mr. Fletcher said I want to say that the porous area, where the grass is growing up between the parking pavers (i.e. grasscrete), was discussed; we decided not to address it. If someone is going to go to that expense to install that, then they are obviously green minded. However, if the porous material is used, the landscaping is still required.

Mr. Way asked along the lines of aesthetics, has any consideration been given to signage and sign restrictions.

Mr. Fletcher replied that is an entire separate issue; and at some other point could be addressed.

Mr. Da'Mes said that is something that needs to come up, because now you have all the LED and flashing signs.

Mr. Fletcher said there was a recent amendment to the City Code regarding signs that changed the enforcement capability of enforcing sign regulations. This came to our attention because of the LED flashing signs. These signs are required to hold a static image for five seconds before they change; but we did not have any enforcement teeth behind the old ordinance – stating the Director of Community Development would remove the sign. Now it is a misdemeanor if it you do not correct the violation. This change has just been implemented in the last two months or so. Hopefully, we will see some change with that.

Mr. Way said it might be worth considering sometime.

Dr. Dilts said staff has done a really fine job with this; it can always be better, but it is a really good movement on aesthetics and environmental impact.

Mr. Fletcher said thank you and asked the Commission how they wanted to proceed? We are prepared to go to public hearing whenever Planning Commission is ready.

Planning Commission agreed that the Parking Lot Landscaping Ordinance would move forward as a public hearing at the January 2012 regular meeting.

Mr. Way asked if within Section 10-3-25, Subsection 3 where it discusses regional or native species of trees, could that be incorporated into the proposed language somewhere.

Mr. Fletcher said yes, we can add that back in as a suggestion.

Vice-chair Fitzgerald asked if there was anything further.

Mrs. Turner said for the CIP presentation at the December meeting would Planning Commission prefer to have each department make a presentation or would you prefer to just ask questions of each department. How would you like to handle it this year?

Mr. Chenault said he felt it was fine last year not having a presentation and just asking questions.

Mr. Da'Mes said he felt that City Council wants us to vet that process and if we are going to do so properly we need to have the presentation and ask questions.

Mr. Fletcher said each department was here last year and the opportunity was available to ask for a brief presentation. I believe no one had any questions last year.

Mr. Da'Mes asked whether Planning Commission was giving due process just by saying here it is, are there any questions?

Mrs. Turner said in years past we have had each department head do a brief synopsis of upcoming projects and new projects, or anything that has changed in terms of priority.

Vice-chair Fitzgerald asked Planning Commission for their thoughts.

Mr. Chenault said I want to do whatever the Planning Commission wants to do. I am guarded about redundancies and generally what they would discuss is already before us in writing.

Mr. Da'Mes said could we ask them to submit a brief paragraph or so, summarizing any changes, etc.

Dr. Dilts said if it is not onerous, then having a paragraph or two for us to read ahead, and also having them here if there are questions, would perhaps be the better use of time.

Mr. Fletcher said the description you will get in the CIP is probably what the paragraph would say.

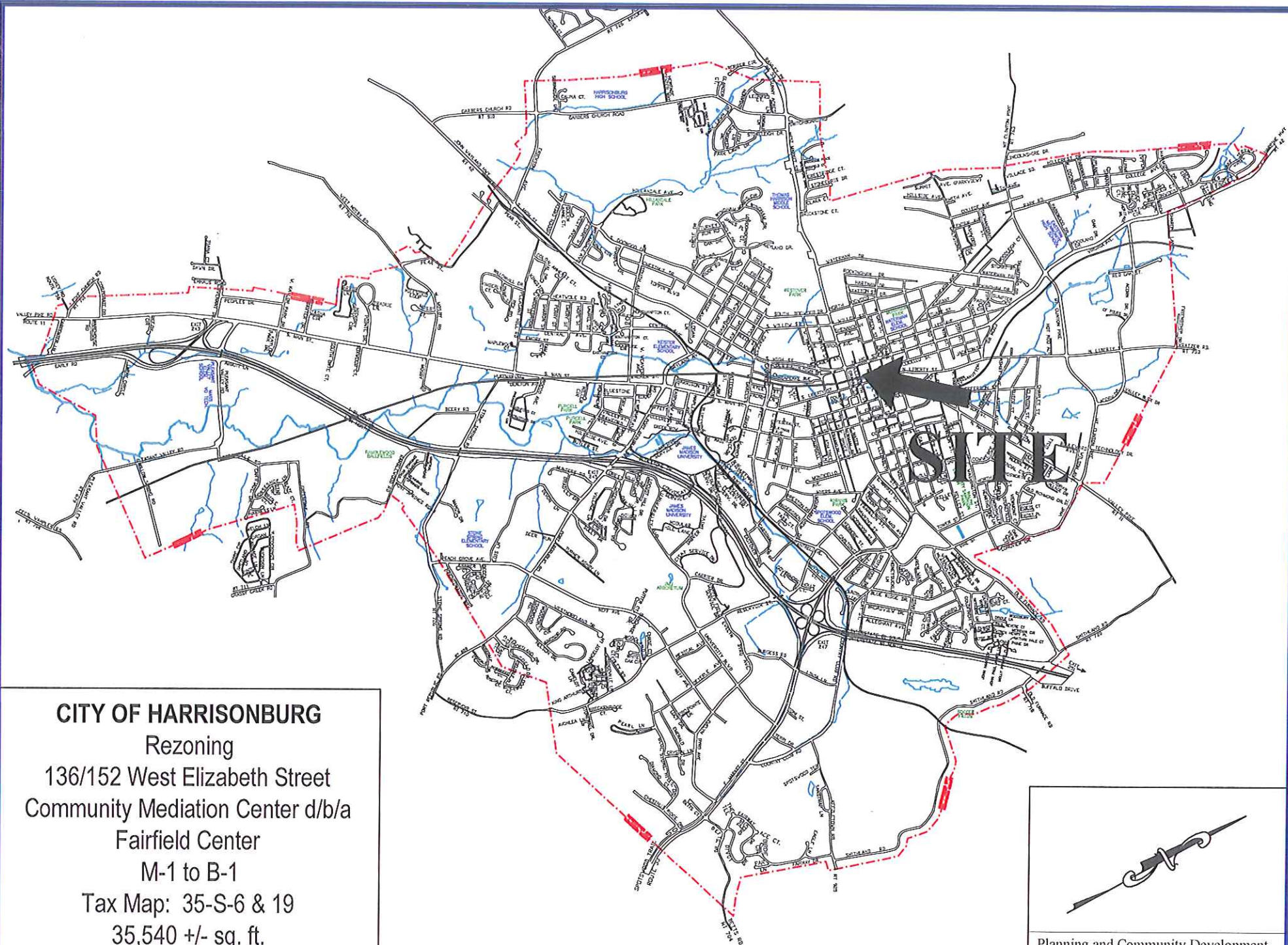
Planning Commission agreed a paragraph was not necessary.

Vice-chair Fitzgerald said she is content to stick with how it was handled last year; as long as there is some time provided to read through the CIP prior to the meeting, and to email questions for anything you do not understand.

Planning Commission agreed to handle the CIP presentation as was done last year.

Adjournment

The meeting was adjourned at 9:50 p.m.

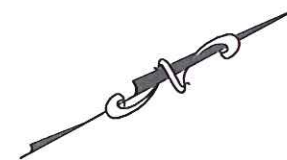


CITY OF HARRISONBURG

Rezoning

136/152 West Elizabeth Street
Community Mediation Center d/b/a
Fairfield Center
M-1 to B-1

Tax Map: 35-S-6 & 19
35,540 +/- sq. ft.
LOCATION MAP



Planning and Community Development
City of Harrisonburg, Virginia



Rezoning - M-1 to B-1
136/152 West Elizabeth Street



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT December 14, 2011

REZONING – 136/152 WEST ELIZABETH STREET (M-1 TO B-1)

GENERAL INFORMATION

Applicant: Community Mediation Center d/b/a Fairfield Center
Tax Map: 35-S-6 & 19
Acreage: 35,540 +/- square feet
Location: 136/152 West Elizabeth Street
Request: Public hearing to consider a request to rezone two parcels from the M-1, General Industrial District to B-1C, Central Business District Conditional.

LAND USE, ZONING, AND SITE CHARACTERISTICS

The Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street. The gross residential density in areas outside downtown should not exceed an average of 15 units per acre, though all types of residential units are permitted: single family detached, single family attached and apartments. Apartments are permitted only if single family detached and/or attached units are also provided and together cover a greater percentage of the project site. Residential densities in downtown may be higher than an average of 15 units per acre, and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

Site: Lot comprising a 20,000 +/- square foot vacant building and an additional undeveloped parcel, zoned M-1
North: Vacuum repair shop fronting West Wolfe Street, zoned M-1
East: Across Norfolk Southern rail line, commercial uses, zoned B-1
South: Across West Elizabeth Street, parking lots, zoned M-1
West: Parking lot, zoned M-1

EVALUATION

The Fairfield Center is requesting to rezone two lots comprising of roughly 35,500 square feet of lot area from the M-1, General Industrial District to B-1C, Central Business District conditional. The properties are located along West Elizabeth Street, adjacent to the Norfolk Southern rail line. The larger lot includes an approximate 20,000 square foot building, addressed as 136 West Elizabeth Street, most recently used as storage and previously the location of the Coin and Gift Shop. At one time, the building housed the Wampler Feed and Seed Company business. Although Blacks Run is nearby, this property is not located within the floodplain.

As described within their submitted documents, the Fairfield Center hopes to renovate this building to provide a location where non-profit, and for profit, organizations and businesses could share space including meeting rooms, conference space, and reception areas. It is their vision that each organization or business would share ownership of the property.

By-right, the B-1 zoning district has no parking requirements, no setback regulations, and maximum height allowances of up to 75 feet in height. As the applicant was requesting a rezoning for two lots which could be sold separately, staff was very concerned about how a rezoning could impact the City's downtown, especially downtown parking demands. If these parcels were zoned B-1, multi-use, multi-story buildings could be erected with no consideration to onsite parking, relying only on the existing downtown parking resources. Knowing that the City already has limited public parking, staff did not want to place further strain on that issue.

However, after meeting with the applicant, staff learned they had already met with representatives of Virginia's Department of Historic Resources to begin their process in working toward obtaining tax credits for historic rehabilitation to help offset the cost of the renovation to the building. Staff was pleased to learn they were preserving the historic building, but further satisfied with the development plans for the property because the strict rules associated with obtaining those benefits indirectly limits what can be done to the structure and the overall magnitude of the building. During the meeting, staff explained the significant concern of the parking constraints, a concern for almost any rezoning in the City's downtown to the B-1 zoning district, and that rezoning property to B-1 without consideration to parking places the City in a very difficult position, potentially leaving the burden of providing parking for private uses on the City's tax payers.

In learning of staff's parking concern and in explaining how they already intended to provide parking for the planned organizations knowing the importance of having nearby parking for their business and clients, the applicant submitted the following proffer:

- The use of tax map parcel 35-S-19 will be limited to parking.

With the submitted proffer, if approved, the zoning of these properties would restrict the use of the undeveloped parcel to only parking, but all permitted uses within the B-1 district could operate within the existing building (on tax map 35-S-6). It should be clearly understood that the rendered drawings and proposed arrangement of the building and parking lot are not proffered. Essentially, these documents demonstrate only the feasibility of having such a layout.

As noted above, the recently adopted Comprehensive Plan now designates both of these properties as Mixed Use Development Areas (MUDA) (the previous Comprehensive Plan designated the lot with the building as MUDA but the undeveloped lot was designated Neighborhood Residential). Generally, the MUDA Land Use Guide designation most closely resembles the characteristics of the B-1 zoning

district. Having such a designation, however, does not automatically mean that all rezoning requests to the B-1 district conform to the Comprehensive Plan, but in this particular case, staff believes it helps.

This entire block of West Elizabeth Street is designated MUDA, and therefore, the subject property falls well within the area the City is promoting for mixed-use-type development and generally for continued growth. Such development, at this location, is very positive as it provides economic and social vitality in the City's core. Furthermore, approving the proposed rezoning preserves and protects environmental and cultural resources while also promoting traditional neighborhood development, where such space is pedestrian friendly, near mass transportation options, and focuses on live-work-type environments.

Staff supports Fairfield Center's request to rezone the subject properties from M-1 to B-1C.



December 8, 2011

Mr. Adam Fletcher
City Planner
City of Harrisonburg
Harrisonburg VA 22801

Ref: 136 and 152 West Elizabeth Street – rezoning M1 to B1 – Proffer

Dear Mr. Fletcher,

The following is offered for the requested rezoning of the two lots from General Industrial District (M-1) to Central Business District (B-1):

- The use of tax map parcel 35-S-19 will be limited to parking.

I hereby proffer that the development of the Subject property on this application shall be in strict accordance with the conditions set forth in this submission.

Sincerely,

Timothy J. Ruebke
Executive Director

Elizabeth Street Building

Statement of Intent

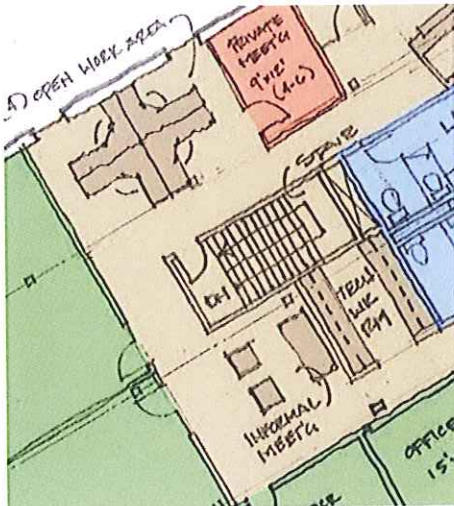


Many nonprofit organizations face increasing demands for their services, but financial support is dwindling due to difficult economic conditions. Reduced government funding and a decline in individual gifts are the new reality.

Boards of Directors for both nonprofit and for-profit organizations must be able to provide vision, expertise and direction in this dynamic and challenging environment.

Managers of for-profit and nonprofit operations perform multiple functions and must be highly skilled in the technical aspects of their organization's mission, as well as in management areas such as finance, human resources, information technology, resource development and establishing inter-organizational relationships such as alliances and partnerships.

Organizations must also consider the needs of the clients and customers they serve, including ease of access, privacy during meetings, restrooms, and general comfort. Many of the low-cost options available to small operations do not meet these needs.



Turning challenges into opportunities

The Fairfield Center and other organizations have conducted discussions on how to best serve the community while operating in current economic conditions. These organizations are committed to honoring the generosity of the community by providing responsible stewardship of contributions from donors, volunteers and investors and improving the leverage of every dollar spent in order to generate maximum value and impact.

Limited budgets have made it difficult to justify paying for meeting rooms, conference space and reception areas that are not used all the time, but are critical resources. The groups agreed that decreasing overhead expenses while increasing the effectiveness of service delivery is a good investment in the long-term sustainability of every organization. This approach not only establishes a more efficient administrative system, but it frees up valuable staff time to focus on delivering mission-related results.



The original building



Inspired by these conversations and similar organizational needs, the Fairfield Board and staff began the search for a building where organizations could benefit from sharing resources—office space, meeting and conferences rooms, equipment, technology, etc. Fairfield is currently the lead partner in this endeavor, but the door is open for other partners to join this process and contribute in ways that further the direction, resources and vision of the initiative.

In August 2011, Fairfield Center commissioned a feasibility study for 136 West Elizabeth Street, a 20,000 square foot building (including a 45-space parking lot) in downtown Harrisonburg. The Elizabeth Street building's layout and design will focus on generating benefits from shared resources for non-profit and profit-oriented organizations that are located in the building as well as those in Harrisonburg and the region. Amenities may include a flexible space 180-person conference room, various sizes of meeting rooms, kitchen, state of the art technologies for conference activities, roof garden for fundraising activities, etc. The design of the space will provide both flexibility and stability, thereby supporting organizations' efforts to respond to the changing needs of customers, clients and the community.

In addition to the practical benefits of reduced administrative overhead from sharing resources with other organization, co-location in a building creates a cost-effective forum for staff to capitalize on others' skills and establish partnerships.

The Elizabeth Street building has many valuable attributes, including the following:

- downtown location
- large parking lot
- direct access to the second floor without the need for stairs or an elevator
- exposed beam construction
- strong engineering

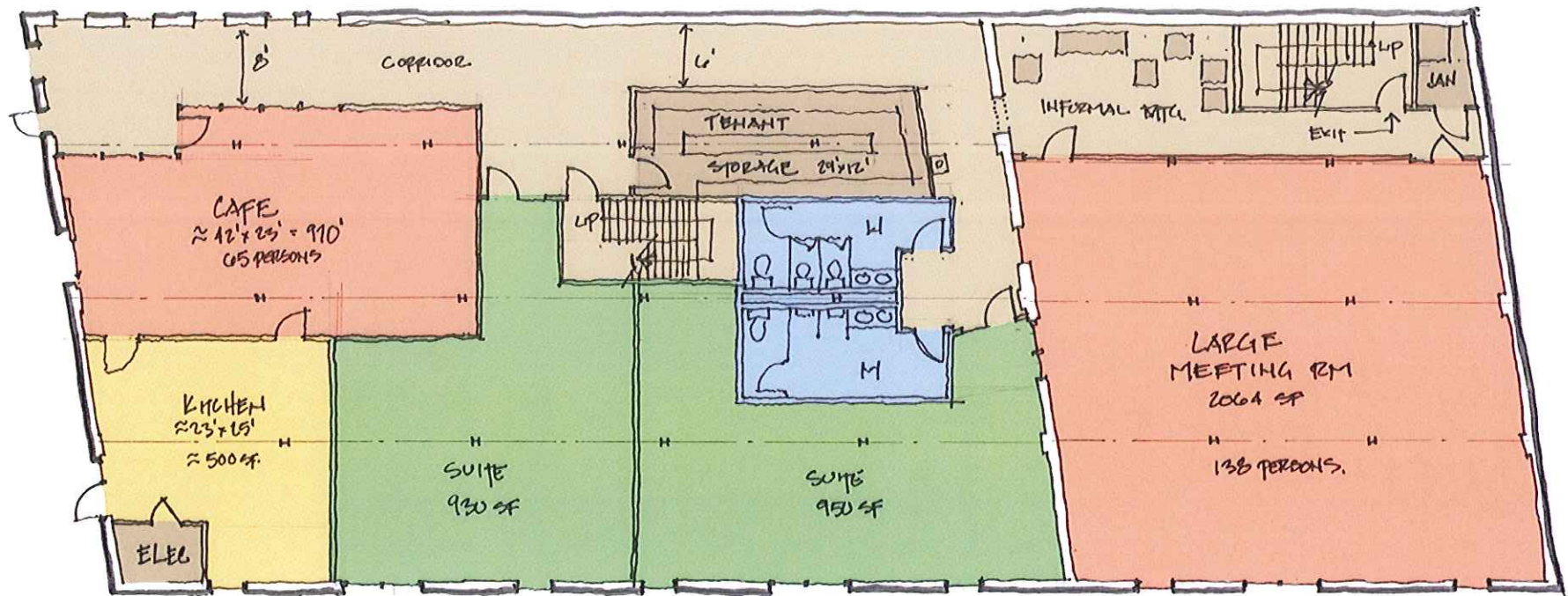
The building is a warehouse in need of a substantial renovation in preparation for use as offices, meeting spaces, and more.

UPDATE 11/1/11: *After the feasibility study and discussions with many potential community partners, Fairfield Center purchased 136 W Elizabeth St to secure the community's opportunity to pursue a multi-tenant building that will accomplish the goals discussed above. Fairfield Center is eager to engage organizations and businesses with interest in using, owning, leasing, and otherwise creating this multi-tenant center in downtown Harrisonburg.*



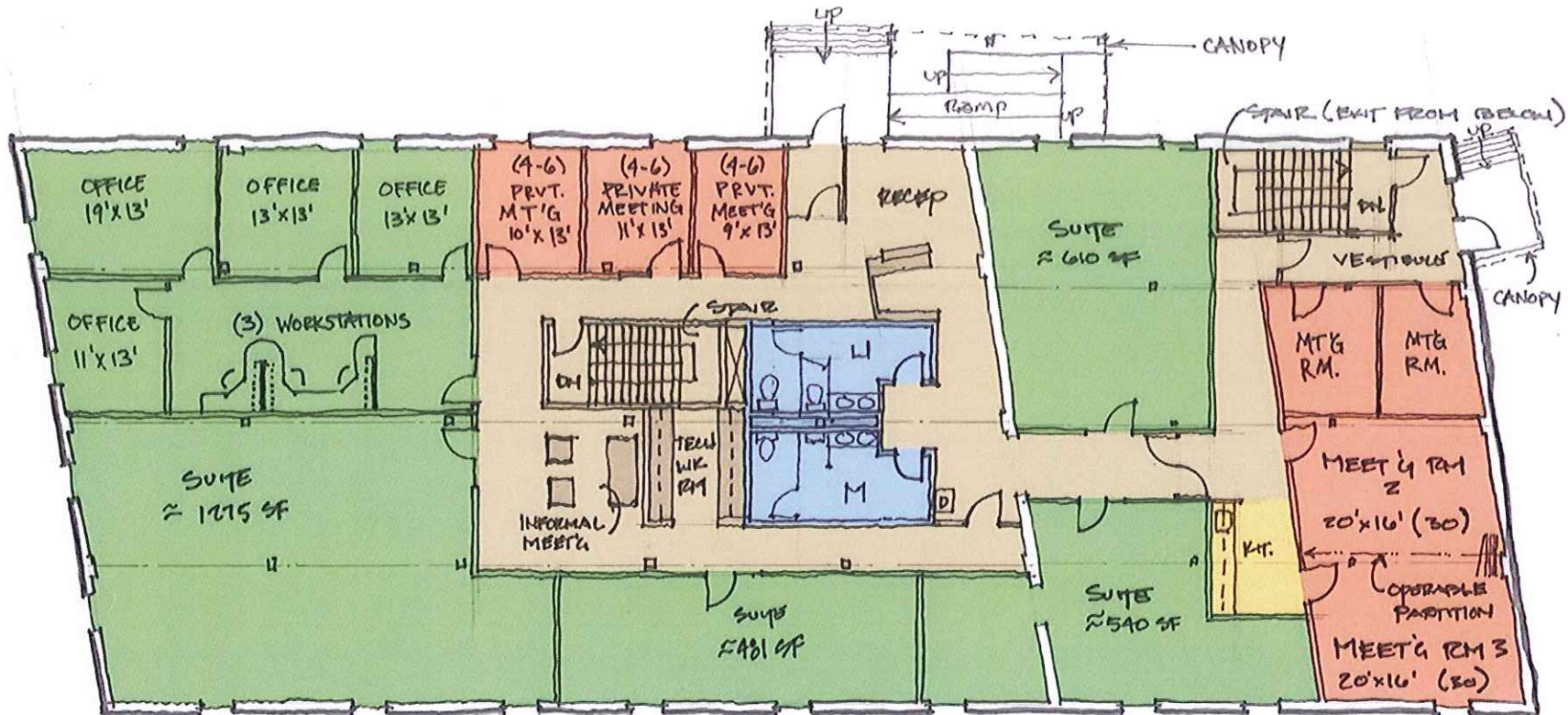
Contact Fairfield Center for information.

Option A: Full Master Plan Build-Out



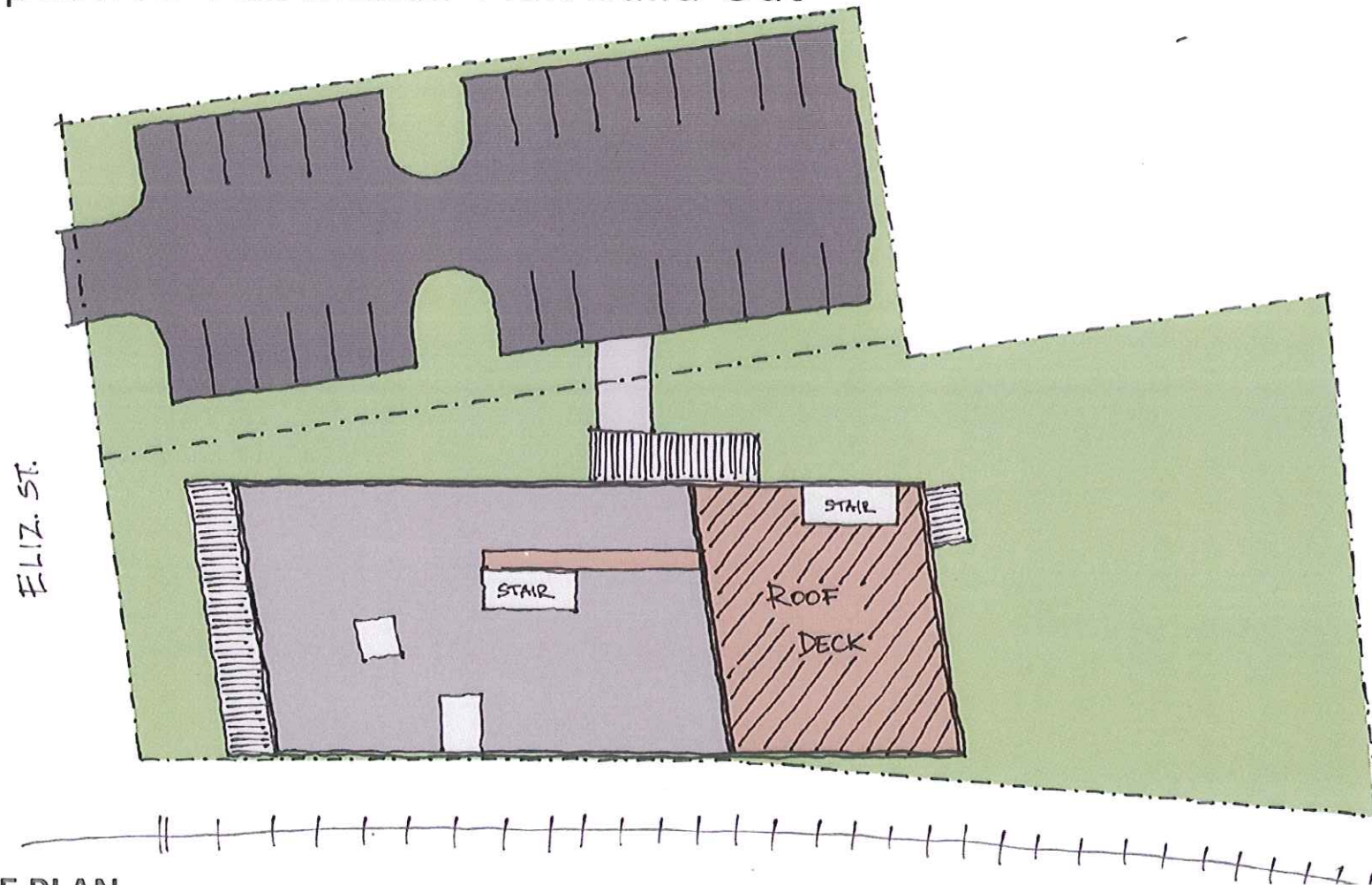
LOWER LEVEL

Option A: Full Master Plan Build-Out



UPPER LEVEL

Option A: Full Master Plan Build-Out



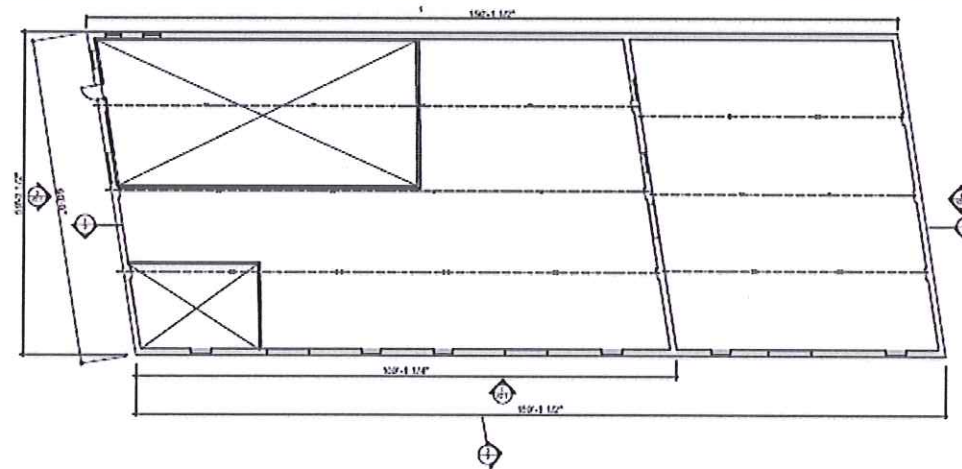
SITE PLAN

Option A: Full Master Plan Build-Out

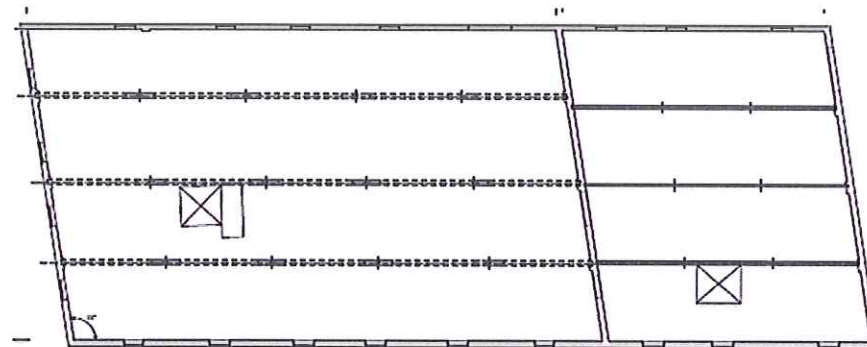


19 September 2011

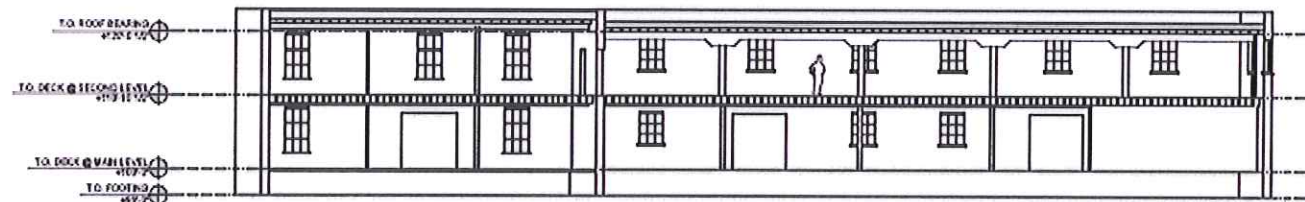
LOWER LEVEL



UPPER LEVEL

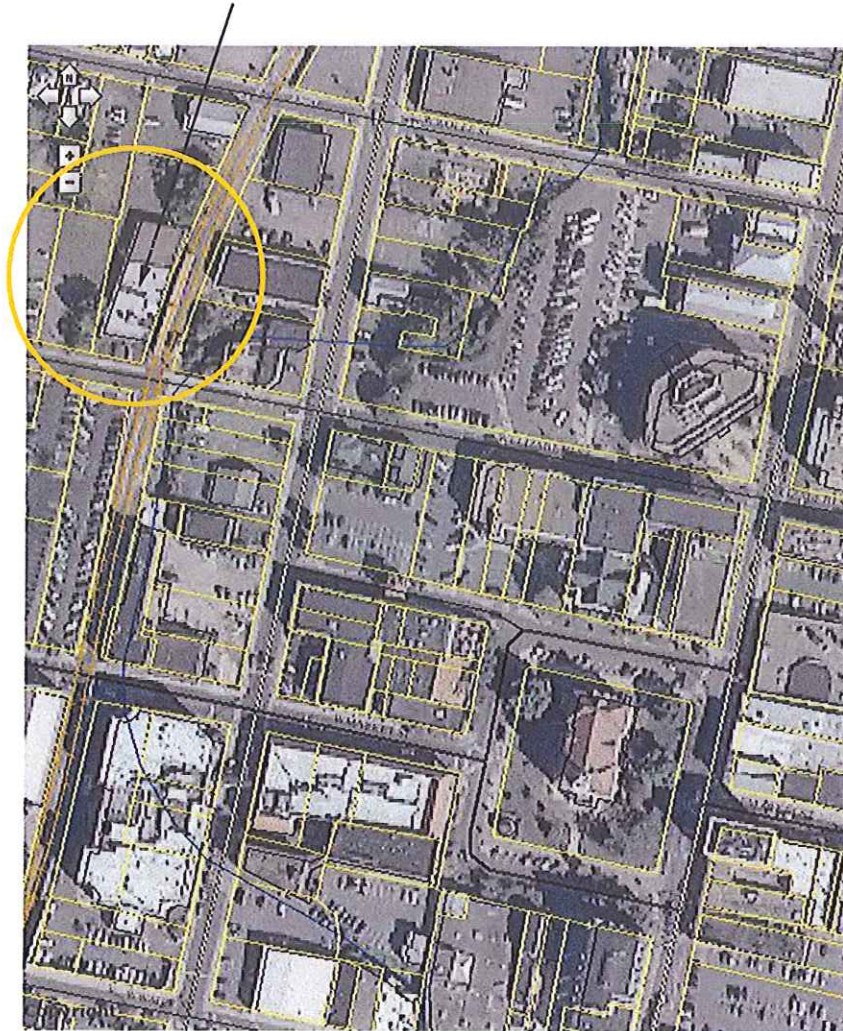


SECTION



136 W. Elizabeth Street

19 September 2011

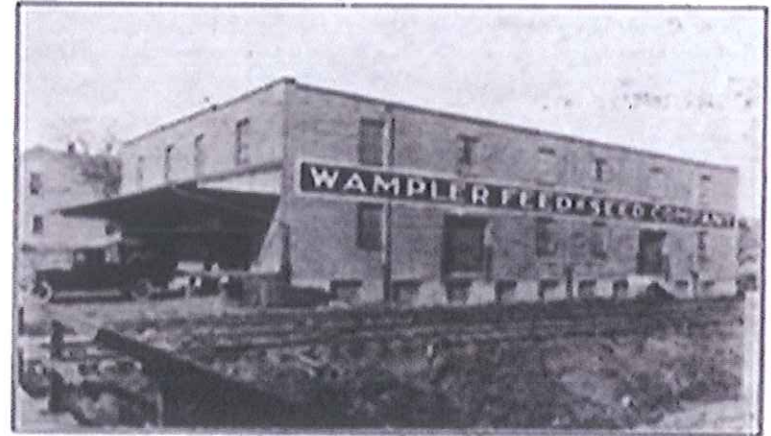


Liberty St.

Main St.

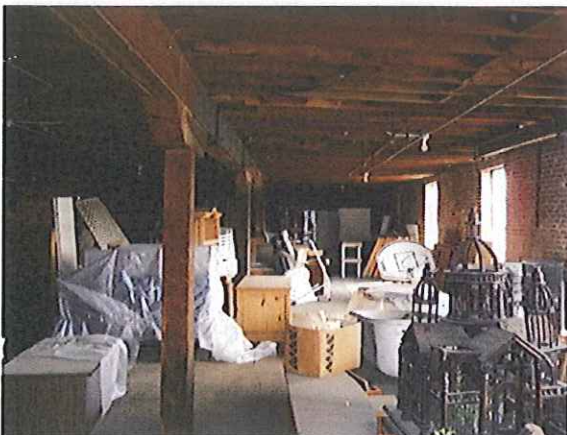
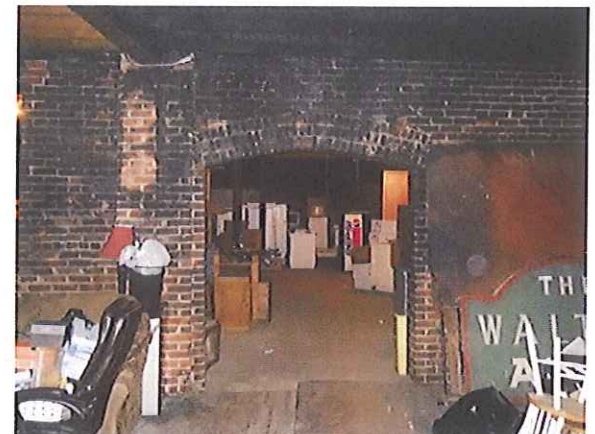
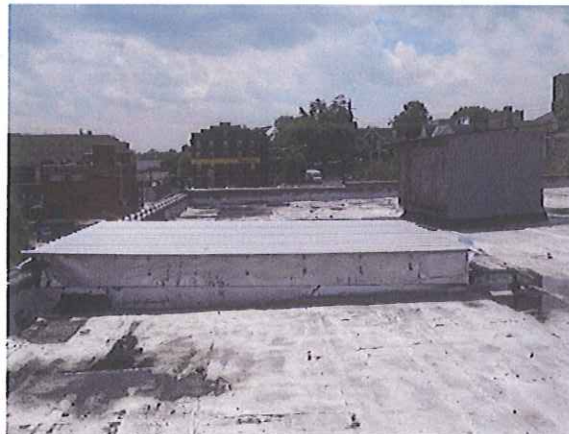
Wolfo St.

Elizabeth St.



136 W. Elizabeth Street

19 September 2011



Potential Uses:

- Not-for-Profits | one desk/ one office/ one suite
- Shared | technology/ administrative support/ meeting space
- Restaurant/ “Third Place”
- Roof Terrace
- For-Profit Companies

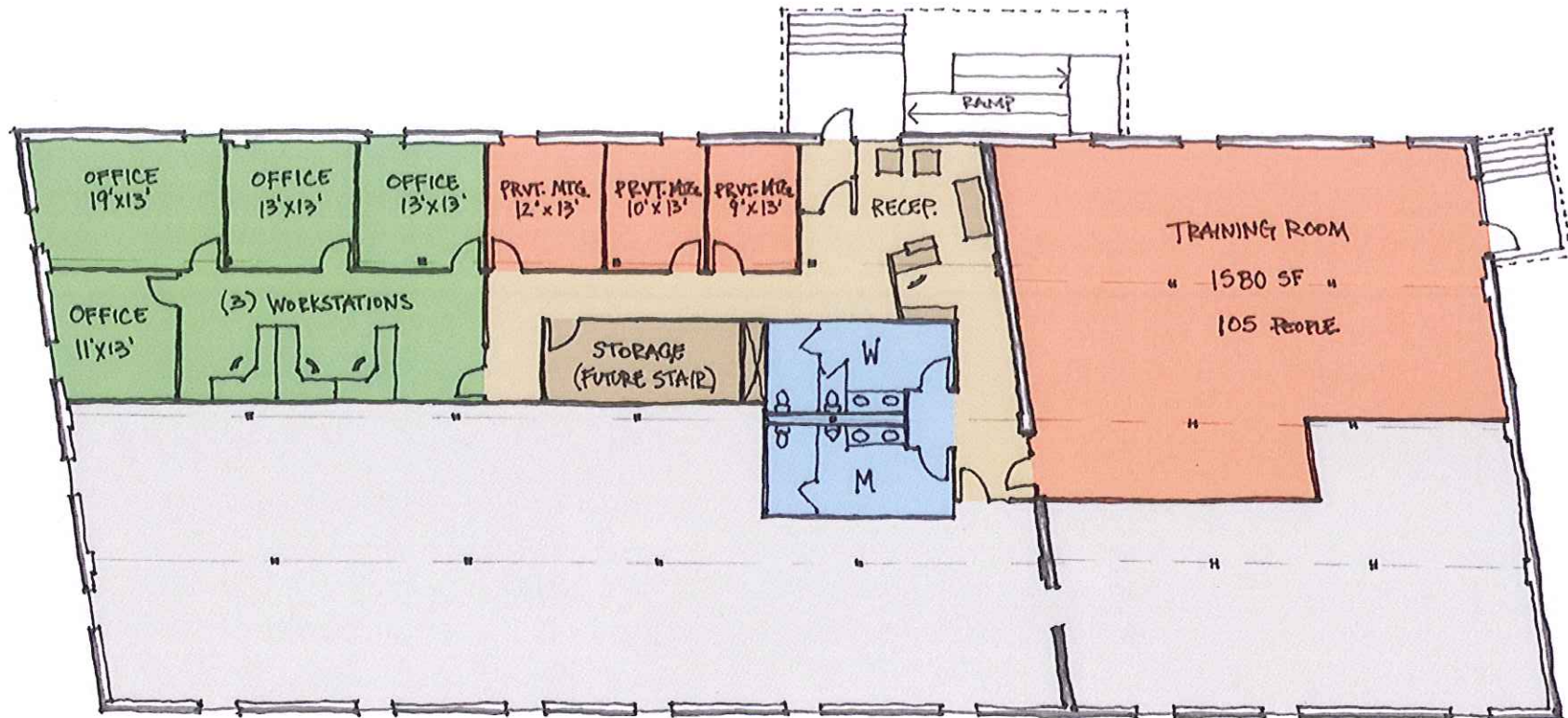


Considerations:

- Historic Preservation Tax Credits
- Green Certification
- Rezoning



Option B: Fairfield Center Only & Essential Upgrades



OPTION B
3/32" = 1'-0"
± 4,540 SF

Harrisonburg Tax Map Numbers: 035 S 6 and 035 S 19

THIS DEED made this 12th day of October, 2011, by and between VH COMPANY, LLC, a Virginia limited liability company, Grantor, and COMMUNITY MEDIATION CENTER, d/b/a FAIRFIELD CENTER, a Virginia non-stock corporation, Grantee,

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid by the Grantee to the Grantor, and other good and valuable consideration, the receipt whereof is hereby acknowledged at and before the sealing and delivery of this deed, the Grantor does hereby grant and convey with General Warranty and English Covenant of Title, subject to easements, restrictions and reservations of record, unto Community Mediation Center, d/b/a Fairfield Center, Grantee, all those two certain adjoining parcels, together with improvements thereon and appurtenances thereto belonging, situated on the north side of West Elizabeth Street in the City of Harrisonburg, Virginia, being more particularly described as follows:

Tract One: That certain parcel of land containing approximately 22,000 sq. ft., more or less, with a street address of 136 West Elizabeth Street, fronting on the north side of West Elizabeth Street and bound on the east by the railroad right of way and on the west by Tract Two conveyed herein, and being more particularly described by metes and bounds in the deed to Valley Hardware Company, a Virginia general partnership from Joseph K. Funkhouser, II, and others, dated December 30, 1986, of record in the Clerk's Office of the Circuit Court of Rockingham County in Deed Book 827, Page 68, and therein described as Parcel One;

Tract Two: That certain parcel of land containing 12,540 sq. ft, more or less, with a street address of 152 West Elizabeth Street, fronting on the north side of West Elizabeth Street, and being shown and designated as "NEW LOT 2" on a survey entitled "FINAL PLAT, VALLEY HARDWARE SUBDIVISION, SECTION ONE", made by Michael W. Myers, L.S.

*This document was prepared by Wharton Aldhizer & Weaver, P.L.C.
100 South Mason Street, Harrisonburg, Virginia 22801
The Title Insurer is unknown to the Preparers of the Deed*

Please Return this Document to:
West View Title Agency, Inc.
370 Neff Avenue, Suite V
Harrisonburg, Virginia 22801

dated July 10, 1997, of record in the aforesaid Clerk's Office in Deed Book 1526 Page 179 which property was conveyed to Valley Hardware Company, a Virginia general partnership from Joseph K. Funkhouser, II, and others, dated December 30, 1986, of record in the aforesaid Clerk's Office in Deed Book 827, Page 68, and therein described as Parcel Two, Lot No. 2.

Valley Hardware Company converted to VH Company, LLC, a Virginia limited liability company, as evidenced by a Certificate of the State Corporation Commission, of record in the aforesaid Clerk's Office in Deed Book 1999 Page 292.

WITNESS the following signature and seal.

VH COMPANY, LLC

By: Sallie E. Funkhouser (SEAL)
SALLIE E. FUNKHOUSER
Its: Manager

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this 1 day of November, 2011, by SALLIE E. FUNKHOUSER.

My commission expires: July 31, 2015.

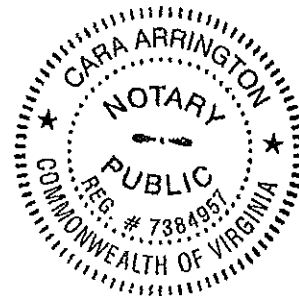
Notary Registration No.: 7384957.

Cara Arrington
Notary Public

Grantees' Address:

165 South Main Street
Suite A
HARRISONBURG, VA 22801

48721-1/11017768



Date Application Received: 11-8-11

Total Paid: \$405⁰⁰ 03

Application for Change of Zoning District City of Harrisonburg, Virginia

Section 1: Property Owner's Information

Name: Community Mediation Center d/b/a Fairfield Center
Street Address: 165 South Main St. Ste A Email: tim@fairfieldcenter.org
City/State/Zip: Harrisonburg VA 22801
Telephone (work): 540 434-0059 (home or cellular): 540-746-6004 (fax): 540-574-0174

Section 2: Owner's Representative Information

Name: Tim Ruebke, Executive Director
Street Address: 165 South Main St. Ste A Email: tim@fairfieldcenter.org
City/State/Zip: Harrisonburg VA 22801
Telephone (work): (Same) (home or cellular): _____ (fax): _____

Section 3: Description of Property

Location (street address): 136 & 152 West Elizabeth Street
Tax Map Number: Sheet: 35 Block: S Lot: 6 & 19 Total Land Area (acres or square feet): 35,540 SF
Existing Zoning District: M1 Proposed Zoning District *: B1
Existing Comprehensive Plan Designation: Mixed Use Development

**If applying for conditional rezoning, provide a letter stating proffers on separate sheet of paper*

Section 4: Application Fee

\$375.00 plus \$30.00 per acre, and if applicable, Fees for a Traffic Impact Analysis (TIA) Review (see below)

- (a) Would the development from this rezoning require a Traffic Impact Analysis by VDOT?
Yes _____ No X

If yes, then fees must be made payable to VDOT to cover costs associated with the TIA review.

PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

- (b) Would the development from this rezoning require a Traffic Impact Analysis review by the City?
Yes _____ No X

If yes, then an additional \$1,000.00 must be made payable to the City to cover costs associated with the TIA review.

PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

Section 5: Names and Addresses of Adjacent Property Owners (Use separate sheet for additional names)

North: _____
East: _____
South: _____
West: _____

Section 6: Certification

I certify that the information contained herein is true and accurate. Signature: _____

Tim Ruebke
Property Owner

See Back for Items Required for Submission

ITEMS REQUIRED FOR SUBMISSION

- ☒ Completed Application
- ☐ Survey of Property
- ☒ Description of Proposed Use
- ☐ Adjacent Property Owners

- ☒ Fees Paid
- ☒ Source Deed
- ☐ Proffers (if applicable)
- ☐ _____



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

December 14, 2011

SUBDIVISION AND ZONING ORDINANCE AMENDMENTS

**Subdivision Ordinance Sections 10-2-11, 2, 41, 42, 43, 61, 62, 63, and 64.
Zoning Ordinance Sections 10-3-24, 26, 55.2, 55.5, 55.6, 56.2, 56.3, 56.4, 56.6, 57.2, 57.3,
57.4, 57.6, 58.2, 58.3, 58.4, 58.5, 58.6, 113, and 115.**

In completing the work associated with the awarded Virginia Department of Transportation (VDOT) Local Assistance Grant for Urban Development Areas (UDAs), staff is proposing multiple City Code amendments to align subdivision and zoning regulations with the City's Comprehensive Plan. As listed above, there are nine sections of the Subdivision Ordinance and 20 sections of the Zoning Ordinance that staff is proposing to amend.

These amendments would not only fulfill the requirements of the VDOT grant, but it would successfully execute several recommended strategies of the Comprehensive Plan, listed within the UDA section in Chapter 5 (page 5-10). In brief, these recommendations include promoting the development of mixed residential and mixed-use areas, and to develop a zoning approach to require, permit, and/or provide incentives for the development of low density and medium density mixed residential neighborhoods, live-work neighborhoods, and traditional neighborhood development (TND).

To be clear, these amendments would not create more regulations or requirements for developments; rather, they would afford more flexibility for property owners/developers. For many sections, the amendments simply add language that clarifies or further promotes developments to be of traditional neighborhood design. The most significant amendment is within the off-street parking regulations of Article G. That amendment creates more options and flexibility for developments to share parking.

In presenting this information, Milton Herd of Herd Planning and Design, LTD, a consultant hired through the VDOT grant, will be in attendance to describe the proposed amendments and to help answer questions. Planning Commission should remember Mr. Herd as he attended the March 9, 2011 regular meeting, where he explained the work he and others performed to help the City fulfill the Code of Virginia requirements per Section 15.2-2223.1 that stipulates the inclusion of UDAs in comprehensive plans.

Although not being reviewed by Planning Commission as it is not required, staff is also proposing amendments to the Design and Construction Standards Manual. The intent of those amendments is similar to the objectives of the modifications for the Subdivision and Zoning Ordinances. The proposed amendments to all three regulatory texts will be presented to City Council next month.

Draft

City of Harrisonburg, Virginia
Subdivision Ordinance

Revised Draft Amendments
Prepared 11-14-11

as part of the VDOT Local Assistance Grant
for Urban Development Areas

New language is shown as underline; language proposed for
deletion is shown as ~~strike-through~~



RENAISSANCE PLANNING GROUP



Draft

City of Harrisonburg, Virginia

CHAPTER 2. SUBDIVISION ORDINANCE*

***Editor's note:** An ordinance of June 24, 1997, amended and re-enacted Tit. 10, Ch. 2 to read as herein set out. Prior to this amendment, Ch. 2 contained the city's subdivision regulations and was derived from Code 1973, §§ 27-2--27-33 and from ordinances adopted Feb. 14, 1984; Feb. 12, 1985; Mar. 12, 1991; Nov. 26, 1991; and Apr. 13, 1993.

Article A. General Provisions

Sec. 10-2-1. Purpose and intent, general effect and definitions.

(a) *Purpose and intent.* The Subdivision Ordinance of the City of Harrisonburg, Virginia (hereinafter Ordinance) is intended to: guide and facilitate the orderly, beneficial growth of the community; to assure the orderly subdivision of land and its development; ~~and for the general purpose of promoting~~ promote the health and safety and general welfare of the public; ~~achieve the goals and policies of the City's Comprehensive Plan;~~ promote an economical use of public and private funds while protecting environmental quality, and the quality of life for the community; promote the creation and continuation of pedestrian and bicycle-friendly streets, and traditional, human-scale development patterns; and of further accomplishing the objectives of section 15.1-465 §15.2-2200, et seq. of the Code of Virginia, as amended

(b) *General effect.* The effect of this Ordinance shall be consonant with the objectives of the city to assure the orderly subdivision of land and its development, to coordinate the development of streets within and contiguous to any subdivision to establish adequate provisions for water, sewer, drainage, flood control and other public purposes, to promulgate acceptable physical standards and criteria for subdivision improvements as specified in the Design and Construction Standards Manual, to provide for dedication of public rights-of-way, and to serve in implementing the city's comprehensive plan, zoning ordinance and other land use plans.

(c) *Definitions.* For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Alley: A passageway open to public travel affording generally a secondary means of vehicular access to abutting lots and not intended for general traffic circulation.

Building setback: The minimum distance a building must be set back from the street line.

Collector street: A street that brings traffic from local residential (minor) streets to major streets.

Cul-de-sac: A street with only one outlet and having an appropriate turnaround for a safe and convenient reverse traffic movement.

Director: Director of planning and community development or their designee.

Design and Construction Standard Manual: Refers to the City of Harrisonburg's Design and Construction Standards Manual as adopted by city council.

Easement: A grant by a property owner of the use of land for a specific purpose.

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Lot: A portion of a subdivision intended for transfer of ownership or for building development for a single building and its accessory building.

Major street: A street shown as a major street on the city major-street-plan "master transportation plan".

Marginal access street: A minor street generally paralleling and contiguous to a major street designed primarily to promote safety by providing free access to abutting properties and limited access to the major street.

Minor street: A local residential street which provides access to building sites, space for public utility lines and space for light and air.

Plat: A map or drawing on which the proposed subdivision of land is presented for approval and, when in final form, for recording.

Property: Any tract, lot, parcel or several of the same collected together for the purpose of subdividing.

Street: Any way for vehicular traffic other than alleys, including such ways designated as streets, lanes, boulevards, expressways, roads, highways, thoroughfares, parkways, thoroughways, avenues or places, or however otherwise designated.

Subdivider: The person, firm, association, organization, or corporation which holds legal title to land and subdivides it.

Subdivision: The division of a lot, tract or parcel of land into two (2) or more lots, tracts or parcels, any of which are less than five (5) acres in area for the purpose, whether immediate or future, of sale or of building development.

(1) Division of land for agricultural purposes not involving the establishment of a new street or access easement shall be exempt from these regulations.

(2) Industrial property shall be developed within the framework of this chapter.

(3) The term "subdivision" includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

(Ord. of 6-24-97)

Variance: A reasonable deviation from the provisions regulating the size, configuration or area of a street or other feature, when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done.

Sec. 10-2-2. Variances.

(a) Where a subdivider can show that a provision of this chapter would cause an unnecessary hardship if strictly adhered to, because of topographical or other unusual conditions peculiar to the site, including that a provision of this chapter would undermine or conflict with the goals and policies of the City's Comprehensive Plan that encourage walkable, pedestrian and bicycle-friendly street corridors, and after consideration by the planning commission the city council may authorize a variance, provided that such variation will not have the effect of nullifying the intent and purpose of the comprehensive plan or this chapter or the Design and Construction Standards Manual.

(b) The standards and requirements of this chapter may be modified by the planning commission in the case of a plan and program for a group housing development or

Draft

residential planned unit development, which in the judgment of the planning commission provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.

(c) In granting variances and modifications, the city council may require such conditions as will in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

(d) Posting of property. Notwithstanding any advertising requirements imposed by the Code of Virginia, as amended, any property proposed for review due to a variance of the requirements of this chapter shall be posted for public notice as specified below. At least fourteen (14) days prior to the planning commission's meeting reviewing the pending application, the city shall erect on the subject property signs indicating the variance proposed and a contact phone number for persons wanting more information regarding the public hearing/meeting. Such signs may not be removed until the city council has acted upon the application, and shall be removed no later than five (5) days thereafter. The city shall determine the number of signs required, placement, and type of posting; however, there shall be at least one (1) sign posted along each public right-of-way abutting the property.

(Ord. of 6-24-97; Ord. of 5-28-02, § 1)

Sec. 10-2-3. Sale or transfer of lots.

No land shall be sold or transferred by reference to a plat of a subdivision of such land before such plat has been recorded as herein provided.

(Ord. of 6-24-97)

Sec. 10-2-4. Building permit withheld.

No building permit shall be issued for any structure or building to be located on any land which has been subdivided until a plat of such subdivision shall have been recorded as herein provided.

(Ord. of 6-24-97)

Sec. 10-2-5. Appeals.

Appeals shall lie from the disapproval of a plat by director or the planning commission to the appropriate court, as provided in section 15.1-475, chapter 11, title 15.1, article 7 of the Code of Virginia.

(Ord. of 6-24-97)

Sec. 10-2-6. Proceedings to restrain or abate violations.

In case of any violation, or attempted violation of the provisions of this chapter, the city council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such violation, or attempted violation, to restrain, correct or abate such violation or attempted violation, or to prevent any act which would constitute such a violation.

(Ord. of 6-24-97)

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Sec. 10-2-7. Amendment of chapter.

This chapter may be amended in whole or in part by the city council, provided that any such amendment shall either originate with or be submitted to the commission for recommendation; and further provided that no such amendment shall be adopted without a public hearing having been held. Notice of the time and place of the hearing shall have been given at least once a week for two (2) weeks, and the last notice at least ten (10) days prior to the hearing.

(Ord. of 6-24-97)

Sec. 10-2-8. Waiver of chapter requirements.

Where a single lot or parcel of land, which consists of five (5) or less acres in gross area, is proposed to be divided into not more than four (4) lots, or where the lot lines of existing lots are proposed to be changed or vacated, any one (1) or more of the requirements of this chapter may be waived in writing by the director of community development, the agent responsible for the administration and the enforcement of this section, provided that such division:

- (1) Conforms to all applicable zoning ordinance requirements;
- (2) Does not involve any new public street, road or easement of access;
- (3) Does not offer opportunity to obstruct the floodplain or planned major highway;
- (4) Does not adversely affect any part of any adopted plan; and
- (5) Does not in any way violate the intent of this chapter or any applicable zoning ordinance.

A plat, prepared by a certified land surveyor licensed in the state, showing the metes and bounds of the lots resulting from a division of land under this section shall be presented to the agent for final approval prior to recordation. The plat shall include the following certification:

"This subdivision known as _____ Subdivision is approved by the undersigned pursuant to section 10-2-8 of the Harrisonburg City Code and may be admitted to record.

TABLE INSET:

Dated: _____
Director of planning and community development"

Such plat shall be recorded in the clerk's office of the Circuit Court of Rockingham County, Virginia, within the time period as set forth in section 10-2-27 of this chapter.

(Ord. of 6-24-97)

Secs. 10-2-9--10-2-20. Reserved.

ARTICLE B. PLATS GENERALLY

Sec. 10-2-21. Required to be made, approved and recorded.

Any subdivider of any property located wholly or partly within the corporate limits of the city who subdivides the same, or who causes any streets or public way to be created, shall cause a plat to be made of such subdivision, with reference to known or permanent monuments, and the same to be recorded in the office of the clerk of the circuit court of the county as provided in this chapter and the Virginia Land Subdivision

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and Development Act, chapter 11, title 15.1, article 7, sections 15.1-465 through 15.1-485 of the Code of Virginia. Also no such plat shall be recorded unless and until it shall have been submitted to and approved by the director as required by section 15.1-475 of the Code of Virginia.

(Ord. of 6-24-97)

Sec. 10-2-22. Preapplication conference.

Before preparing a preliminary plat, a subdivider should confer with the director relative to the regulations contained in this chapter and the provisions of the comprehensive plan for the city.

(Ord. of 6-24-97)

Sec. 10-2-23. Preliminary plat--Requirements and contents.

The preliminary plat, marked as such, shall be presented to the planning commission at a scale of one inch equals one hundred (100) feet (1" = 100') with any supporting data, showing the following:

- (1) Proposed subdivision name, location, acreage and land use.
- (2) Date, north point and graphic scale.
- (3) Names and addresses of the owners of the property, including the existing mortgagee, the subdivider and the designer of the layout.
- (4) Location and names of adjoining subdivisions or names of the owners of adjoining lands.
- (5) Topography: contours at two-foot intervals unless grade is fifteen (15) percent or more, in which case contours shall be at five-foot intervals.
- (6) Existing and proposed streets, easements and other rights-of-way within and adjoining the subdivision including right-of-way and roadway widths, approximate grades and proposed street names.
- (7) Location of existing and proposed utilities adjacent to the tract to be subdivided, including size and elevation.
- (8) Location of building setback lines and zoning district lines.
- (9) Lot lines, lot and block numbers and approximate dimensions. If proposed subdivision is a residential planned unit development structures and approximate dimensions shall be shown.
- (10) Proposed method of water supply, drainage provisions, sanitary sewer layout or other accepted sanitary plan and methods of flood control where applicable. Connections with existing facilities, sizes of proposed facilities and any accessory structure shall also be shown.
- (11) Draft of homeowners' association agreements or protective covenants, if any, whereby the subdivider proposed to regulate land use in the subdivision and otherwise protect the proposed development.
- (12) The location of existing watercourses and other geographic features.
- (13) Preliminary location of stormwater management best management practice (BMP) boundary areas.
- (14) A vicinity sketch or key map at a scale of two hundred (200) feet to the inch shall be shown on or accompany the preliminary plat. This map shall relate the subdivision to existing landmarks and show how streets, alleys and other significant proposals connect

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or relate to existing facilities in neighboring subdivisions or undeveloped property to produce the most advantageous development of the entire area.

(15) The fee for filing a preliminary plat without a variance shall be one hundred fifty dollars (\$150.00) plus ten dollars (\$10.00) per lot, or if filing a preliminary plat with a variance the fee shall be one hundred seventy-five dollars (\$175.00) plus ten dollars (\$10.00) per lot, made payable to the city. The fee shall be paid upon the filing of the plat with the city.

In addition, if the preliminary plat requires a traffic impact analysis review by the Virginia Department of Transportation (VDOT), then all additional fees for that review shall be made payable to the Virginia Department of Transportation. If the preliminary plat requires a traffic impact analysis review, only by the city, then one thousand dollars (\$1,000.00) shall be made payable to the city. The preliminary plat application shall not be considered accepted until the TIA has been reviewed.

(Ord. of 6-24-97; Ord. of 5-28-02, § 2; Ord. of 7-22-08(3); Ord. of 9-23-08(1))

Sec. 10-2-24. Same--Filing for approval; action by planning commission.

Whenever a subdivision of land is proposed to be made and before any sale or contract for the sale of such subdivision as a whole or any part thereof is made or before any construction work including grading is started, the subdivider shall file not less than eight (8) copies of a preliminary plat of the proposed subdivision as provided in section 10-2-23, such plat to be filed at least thirty (30) days prior to the meeting at which it is to be considered for approval. The planning commission shall in not less than thirty (30) nor more than sixty (60) days advise the subdivider of their approval or disapproval of the preliminary plat and other required exhibits as submitted or modified, and if approved, they shall express such approval on the plat, stating the conditions of approval, if any, or if disapproved, shall express such disapproval and the reasons therefor. Approval of a preliminary plat shall not constitute approval of the final plat.

(Ord. of 6-24-97)

Sec. 10-2-25. Final plat--Requirements and contents.

(a) The final plat shall be prepared by a competent surveyor or civil engineer duly licensed by the state. The subdivider shall submit to the director, at a scale of one inch equals one hundred feet (1" = 100'), one original mylar tracing and eight (8) prints of the final plat, clearly and legibly drawn in black India ink on a sheet eleven by seventeen inches (11" x 17"), including a margin of one-half-inch outside rules border lines at bottom, top and right sides, and one and one-half (1 1/2) inch outside rules border line for binding on the left seventeen (17) inch side of the sheet. When more than one sheet is necessary, an index sheet of the same size may be required showing the entire subdivision.

(b) The final plat shall show:

(1) Bearings and distances to the nearest existing street lines or bench marks or other permanent monuments (not less than three (3)) shall be accurately described on the plat.

(2) Municipal, county and land lot lines accurately tied to the lines of the subdivision by distance and angles when such lines traverse or are reasonably close to the subdivision.

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(3) Exact boundary lines of the tract, determined by a field survey, giving distances to the nearest one-tenth (1/10) foot and angles to the nearest minute, which shall be balanced and closed with an error of closure not to exceed one to five thousand (5,000).

(4) Name of subdivision, exact locations, widths and names of all streets and alleys within and immediately adjoining the plat.

(5) Street centerlines showing angles of deflection, angles of intersection, radii and lengths of tangents.

(6) Lot lines with dimensions to the nearest one-tenth foot and bearings. If proposed subdivision is a residential planned unit development, exact location of all structures shall be shown.

(7) Lots numbered in numerical order and blocks, lettered alphabetically.

(8) Location, dimensions and purposes of any easements and any areas to be reserved or dedicated for public use.

(9) Accurate location, material and description of monuments and markers.

(10) A statement, either directly on the plat or in an identified attached document, of any private covenants or homeowners' association agreements.

(11) When one (1) or more temporary turnarounds are shown, the following note shall be included on the plat:

The area on this plat designated as "Temporary turnaround" will be constructed and used as other streets in the subdivision until (insert street name) is/are extended to (insert street name if possible, otherwise insert the following note: a connecting street or to another turnaround which is approved by plat by the planning commission) at which time the land in the temporary turnaround area will be abandoned for street purposes and will revert to adjoining lot owners in accordance with specific provisions in their respective deeds.

(12) Location of stormwater management best management practice (BMP) boundary areas.

When BMP Boundary Areas are required, a stormwater management/BMP facilities maintenance agreement document shall be submitted for review, and upon approval by the city, be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia.

Note: When BMP Boundary Areas are required, the final plat shall not be approved until the comprehensive site plan is approved.

(13) The following certifications:

a. *Owner's consent and dedication:*

Know all men by these presents, that the subdivision of land as shown on this plat, containing _____ acres, more or less, and designated as _____ Subdivision situated in _____ (District and County or City) Virginia, is with the free consent and in accordance with the desires of the undersigned owners thereof; that all streets on said plat are hereby dedicated to the public use, and that all lots within the subdivision are subject to certain restrictions, reservations, stipulations and covenants as contained in a writing executed by the undersigned, under date of _____, 19_____, and recorded in the Clerk's Office of _____ County in Deed Book _____, Page _____. The said _____ acres of land hereby subdivided having been conveyed to _____ by _____ by deed dated _____, 19_____, and recorded in the Clerk's Office of the Circuit Court of _____ County, Virginia, in Deed Book Page _____.

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Given under our hands this _____ day of _____, 19 _____.

SEAL

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SEAL

b. Surveyor's certificate:

I hereby certify that to the best of my knowledge and belief, all of the requirements of the planning commission, and ordinances of the City of Harrisonburg, Virginia, regarding the platting of subdivisions within the city, have been complied with.

Given under my hand this _____ day of _____, 19 _____.

State Certified Engineer
(or Land Surveyor)

This subdivision known as _____ Subdivision is approved by the undersigned in accordance with existing subdivision regulations and may be committed to record.

(date) _____ (Signed) _____

Director of planning and community development

(14) The fee for filing a final plat shall be fifty dollars (\$50.00) plus ten dollars (\$10.00) per lot, which fee shall be payable to the City of Harrisonburg. The fee shall be paid upon the filing of the plat with the city. On January 1, 1993, the above-referenced fees shall double.

(c) Data supporting the final plat shall include: plans and profiles, water supply and sewage disposal, including drainage courses, existing sewers, water mains, culverts and other underground structures within the tract showing pipe sizes, invert elevations and grades.

(Ord. of 6-24-97; Ord. of 9-23-08(2))

Sec. 10-2-26. Same--Filing for approval.

(a) The subdivider shall within twenty-four (24) months following the approval of the preliminary plat and other required exhibits, file with the director the final plat or part thereof for approval as provided in section 10-2-25 and in conformity with the approved preliminary plat. Before filing the final plat for approval, all improvements required under these regulations shall be completed, or provisions made therefor, at the subdivider's expense and in accordance with the provisions of this chapter and the specifications of the city, county or state by one of the following methods:

(1) Installation and completion by and at the expense of the subdivider.

(2) The furnishing of a bond in an amount and with surety or conditions satisfactory to provide for and secure the actual construction and installation of such improvement within a period agreed upon by the subdivider and the planning commission, such bond to be approved by the city attorney.

(b) When this provision has been complied with, the subdivider shall file with the director of the city the final plat of the subdivision, in order to secure approval for the recordation as required by these regulations.

(c) Upon approval of the final plat by the director the original mylar tracing of such plat shall be returned to the subdivider for recordation in the office of the clerk of the circuit court of the county. Approval of a final plat shall not be deemed the acceptance by the

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city of any street, alley, utilities or other public space shown on the plat for maintenance, repair or operation thereof.

(d) Failure to file a final plat or section thereof within twenty-four (24) months after approval of the preliminary plat will render such approval null and void unless an extension of time is applied for and granted by the planning commission.

(Ord. of 6-24-97; Ord. of 6-24-08(2))

Sec. 10-2-27. Same--Recordation; procedure upon vacation of recorded plats.

(a) When a final plat has been approved, executed and acknowledged as provided in this article, it shall be recorded in the office of the clerk of the circuit court of the county, and shall be indexed under the names of the owners of the land and under the name of the subdivision. The clerk shall retain the original mylar tracing of such plat and file for public record. Such plat shall be filed for recordation in the clerk's office within sixty (60) days after final approval thereof, otherwise such approval shall be withdrawn by the director and the plat marked "VOID" and returned to the subdivider.

(b) The recordation of such plats shall operate to transfer, in fee simple, to the city such portion of the premises platted as is on such plat set apart for streets, alleys or other public use or for future street widening and to create a public right of passage over the same.

(c) Immediately upon the vacating of any recorded plat, or part thereof, the clerk in whose office such plat has been recorded (whether the same was recorded under the provisions of this chapter or otherwise) shall write in plain legible letters across such plat, or the part so vacated, the word "VACATED," and also make a reference on the same to the volume and page in which the instrument of vacation is recorded; and if a duplicate of such plat be on file in the director's office for public use, the director shall cause similar notations to be legibly written on such duplicate plat, or part thereof so vacated.

(d) The boundary lines of any lot or parcel of land may be relocated or otherwise altered as a part of an otherwise valid and properly recorded plat of subdivision or resubdivision approved as provided in this ordinance and executed by the owner or owners of such land as provided in sections 10-2-21 through 10-2-27, provided such action does not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas; and provided, further, that no easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest herein.

(Ord. of 6-24-97)

Secs. 10-2-28--10-2-40. Reserved.

ARTICLE C. DESIGN STANDARDS

Sec. 10-2-41. Streets and alleys.

(a) Proposed streets and alleys shall conform to the standards and specifications outlined in the Design and Construction Standards Manual except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the City Council when:

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- (i) ~~the proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the City desires.~~
- (ii) ~~the particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts.~~
- (iii) ~~the proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the Comprehensive Plan.~~

(b) All streets which are designated as part of the major street system of the major street plan "master transportation plan" shall be coordinated with adjoining links in such system ~~in accord with the standards set forth in the Design and Construction Standards Manual, and at the same or greater widths.~~ Where such is not shown on the major street plan "master transportation plan", the arrangement of streets in a subdivision shall provide for the continuation of appropriate projection of existing principal streets in surrounding areas.

(c) Reserved strips restricting access to streets, alleys, public ways and easements shall be prohibited.

(d) Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be prohibited.

(e) ~~Where a deflection angle of more than one degree in the alignment of a street occurs, a curve of a reasonable long radius shall be introduced.~~

(f) ~~A tangent at least one hundred (100) feet long shall be introduced between reverse curves on major and collector streets.~~

(g) ~~No street shall intersect another street at an angle less than eighty (80) degrees.~~

(h) ~~Property lines at street intersections shall be rounded with a radius of not less than fifteen (15) feet; except at an intersection of any street with a major street, or at other locations where traffic hazards and congestion may be anticipated, property lines shall be rounded with a radius of not less than twenty-five (25) feet, or greater if deemed necessary by the planning commission.~~

(d) ~~Street right-of-way widths shall be as shown on the major street plan and where not shown thereon such widths shall be not less than as follows:~~

(1) ~~Major Streets, feet . . . 80~~

(2) ~~Collector Streets, feet . . . 60~~

(3) ~~Minor Streets, feet . . . 50~~

(d) ~~Half streets shall be prohibited.~~

(e) ~~Cul-de sacs and other permanent dead-end streets are prohibited except when where permitted by the planning commission in accord with the DCSM, residential permanent dead-end streets, courts or cul-de sacs shall be terminated with a turnaround having an outside roadway diameter of not less than ninety (90) feet, and a right-of-way diameter of not less than one hundred ten (110) feet. Commercial/industrial permanent dead-end streets, courts or cul-de sacs shall be terminated with a turnaround having an outside roadway diameter of not less than one hundred (100) feet, and a right-of-way diameter of not less than one hundred twenty (120) feet.~~

(i) ~~Streets that terminate temporarily and thereby take on the character of a dead-end street shall be provided with a temporary terminal turnaround having a diameter of not~~

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~~less than eighty (80) feet unless the street is proposed to include bus service in which case they shall be dimensioned as a permanent turnaround and hard surfaced to city standards.~~

(f) ~~Proposed streets that are in alignment with existing streets already named shall bear their names. No new street shall duplicate names of existing streets, irrespective of any suffix.~~

(n) ~~Street grades shall not exceed ten (10) percent (ten-foot rise or fall in one hundred (100) horizontal feet) unless approved by the planning commission.~~

(Ord. of 6-24-97; Ord. of 11-24-09(1))

Sec. 10-2-42. Blocks and lots.

(a) ~~Lengths.~~ Block lengths shall be in accord with the standards set forth in the Design and Construction Standards Manual, not exceed one thousand two hundred (1,200) feet, or be less than five hundred (500) feet unless topographic conditions dictate otherwise.

(b) ~~Depth.~~ Blocks shall be of sufficient depth to provide for two (2) tiers of lots where possible.

(c) ~~The greater dimension of blocks adjoining a major street shall, wherever possible, be parallel to such major street.~~

(c) ~~Frontage.~~ All lots shall front on a public street and no lot shall embrace any portion of a street or alley.

(d) ~~Side lot lines.~~ Side lot lines shall be substantially at right angles or radial to street lines.

(f) ~~Reverse frontage.~~ Reverse frontage of lots at street intersections shall be prohibited.

(e) ~~Size, width, depth, shape and orientation.~~ The lot size, width, depth, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated. These requirements shall be not less than the requirements of chapter 3 of this title applicable to the area being subdivided and the use shall be dictated by such regulations.

(h) ~~Residential corner lots.~~ Residence Residential corner lots shall be increased in width to permit appropriate building setback from and orientation to both streets in conformity with chapter 3 of this title, and to provide required separation between intersections and entrances in conformity with chapter 3 of this title.

(i) ~~Dimensions.~~ Lot dimensions shall conform to the requirements of chapter 3 of this title; except, that where the requirements of these regulations provide for larger lot areas and dimensions, these regulations shall apply.

(Ord. of 6-24-97)

Sec. 10-2-43. Easements.

Unless a variance is granted in accord with Sec. 10-2-41 (a), a ten-foot-wide utility easement shall be provided along front lot lines or any lot line adjacent to a public right-of-way. In addition, easements at least ten (10) feet wide, centered on the side or rear lot lines, shall be provided for utilities and drainage. Easements may also be required in, along or adjacent to natural watercourses as drains for sanitary sewers and water diversion purposes.

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(Ord. of 6-24-97; Ord. of 12-15-98)

Sec. 10-2-44. Building setback lines.

The subdivider shall establish setback lines along all streets abutting lots. Such setback lines shall be in conformity with chapter 3 or this title for street setback lines.

(Ord. of 6-24-97)

Sec. 10-2-45. Land dedication.

(a) All land designated for future streets and alley purposes or for street widening shall be dedicated for public use. Where proposed sites for parks, schools, and other areas for public use as contained in the comprehensive plan are located wholly or partly in a subdivision, such location shall be indicated on the preliminary plat in order that it may be determined if, when, and in what manner such areas will be dedicated to, reserved for or acquired by the city council for that use.

(b) This section shall not be construed to preclude the dedication of property for public use not included in the comprehensive city plan, provided such property is acceptable to the city or county for dedication and maintenance.

(Ord. of 6-24-97)

Sec. 10-2-46. Draining and flooding.

The right is reserved to disapprove any subdivision which is inadequately drained or subject to periodic flooding.

(Ord. of 6-24-97)

Secs. 10-2-47--10-2-60. Reserved.

ARTICLE D. MINIMUM IMPROVEMENTS

Sec. 10-2-61. Streets, alleys and parking lots.

~~(a) Grading. All streets and alleys shall be graded to their full width with side slopes and fills outside the right-of-way.~~

~~(b) Subgrade. The subgrade shall be stabilized to a compacted depth with materials which meet the specifications of the city, ready for application of an all-weather surface.~~

~~(c) Curbs and gutters. Curbs and gutters shall be installed on both sides of the street in accordance with the specifications of the city prior to street surfacing.~~

~~(d) Surface. Streets shall be surfaced between curb faces with a bituminous surface treatment in accordance with the specifications of the city.~~

(a) The subdivider is required to make all such improvements to streets, including grading, subgrade, surface, and curbs and gutters, in accord with the requirements of the city's DCSCM.

(b) e) Planting strips. The subdivider is encouraged to shall seed planting strips along streets, and to furnish and plant trees in such planting strips; type and spacing to be approved by the planning commission.

(Ord. of 6-24-97)

(f) Sidewalks. Where a lot being subdivided fronts on an existing street, and adjacent property on either side has an existing sidewalk, the subdivider shall construct, and

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where necessary dedicate land for, sidewalk on the property being subdivided to connect to the existing sidewalk, even when no other street improvements are required.

Sec. 10-2-62. Drainage.

Every subdivision shall be provided with a storm and natural water sewer or drainage system adequate to serve the area being subdivided (including the contributing drainage area). Curb drop inlets shall be installed at street intersections and at such intermediate locations as required to collect surface water. In cases where it is found by the planning commission to be impractical or unreasonable to provide a drainage system as herein specified, the planning commission shall require that certain areas of the subdivision, or other land available to the subdivider be designated for seepage and absorption.

(Ord. of 6-24-97)

Sec. 10-2-63. Utilities.

(a) Every subdivision shall be provided with a complete water distribution system adequate to serve the area being subdivided as required by the department of public utilities and the city manager.

(b) Every subdivision shall be provided with satisfactory and sanitary means for a sewage disposal system as required by the department of public utilities and the city manager. When a public sanitary sewer main is reasonably accessible, the subdivision shall be provided with a complete sanitary sewer system connected with such sewer main including a lateral connection to each lot line. When a public sewer is not accessible, a proper provision shall be made for the disposal of sanitary wastes by one or other of the following methods:

(1) In case of a subdivision in which the average prevailing site lots is less than fifteen thousand (15,000) square feet, the subdivision shall be provided with a complete sanitary sewer system, including a lateral connection for each lot, and a community sewage treatment plant or a type meeting the approval of the planning commission.

(2) In case of a subdivision in which the size of the lots is fifteen thousand (15,000) square feet or more in area, and where the planning commission deems appropriate, in consideration of soil and other conditions as determined by percolation and other tests furnished by the subdivider at his expense, private restrictions shall be filed with the final plat and incorporated in each deed calling for the installation on each lot of an individual sewage disposal system meeting fully the requirements of the city and the state health department.

(c) All utilities including water, gas, sewer and poles or underground conduits for electric lights or telephone lines shall be placed in easements provided along the front, rear or sides of lots whenever this is practicable. When facilities for such utilities, including laterals to each lot line, must be laid in streets, such facilities shall be in place prior to street surfacings.

(Ord. of 6-24-97)

Sec. 10-2-64. Street name signs.

Uniform public and/or private street name signs of approved standard design as utilized throughout the city shall be installed at all street intersections.

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(Ord. of 6-24-97)

Sec. 10-2-65. Survey monuments and pins.

Iron pins shall be installed marking subdivision boundaries, lot corners, angle points and all points along street right-of-way where there is a change of direction such as point of tangent (PT) and point of curvature (PC) and end of radius at street intersections. Before a street is accepted in the city street system, monuments shall be installed in accordance with the specifications and standards outlined in the Design and Construction Standards Manual.

(Ord. of 6-24-97)

Sec. 10-2-66. Compliance with standards, etc., of city.

All utility, street and alley improvements shall be provided in each new subdivision lying wholly or partly within the corporate limits of the city in accordance with standards and specifications of the city.

(Ord. of 6-24-97)

Sec. 10-2-67. Responsibility for cost.

All improvements required to be installed by the subdivider or by this chapter shall be made at the subdivider's expense.

(Ord. of 6-24-97)

Secs. 10-2-68--10-2-80. Reserved.

ARTICLE E. SUBDIVISIONS AND PROPOSED STREETS FOR PUBLIC USE

Sec. 10-2-81. Approval of plat of streets.

Whenever it is desired by any person to open, within the city, an area as a subdivision to be divided or sold as lots, or to open up any way proposed to be used as a public street in the city, he shall submit to the director a plat or survey showing the area so to be subdivided and the location of all proposed streets and alleys, and easements therein, and shall accompany plat with a declaration of his intention to have such plat recorded, and to dedicate to the public use the streets and alleys, and public easements shown thereon in the event such plat be approved. The fact of such approval and the date thereof shall be plainly written or stamped thereon, or upon a copy thereof, and such approval shall be signed by the director.

(Ord. of 6-24-97)

Sec. 10-2-82. Approval and recordation of plat and erection of monuments.

No part of any proposed subdivision within the city and no way proposed to be used as a street within the city shall be taken over by the city for improvement or maintenance, and the city shall be under no obligation to improve or maintain the same and such proposed streets shall not be considered as public streets of the city until the plan or survey of such subdivision and the location of any proposed streets or alleys and the grade and property lines thereon shall have been approved by the director, and until the

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person making such subdivision shall have placed at all street intersections therein permanent monuments, and until a copy of the plat or survey showing thereon its approval by the director as set out in section 10-2-81 shall have been duly recorded in the clerk's office of Rockingham County.

(Ord. of 6-24-97)

Sec. 10-2-83. Connection of proposed water and sewer lines.

Any person desiring to open any subdivision within the city or way to be used as a public street within the city, and to construct water and sewer lines therein, as provided in this article shall apply to the director for permission to connect such proposed water and sewer lines with existing lines of the city and shall furnish a statement or survey showing the location, capacity and manner of installation of the proposed lines, which shall be reviewed for compliance with the standards and specifications outlined in the Design and Construction Standards Manual.

(Ord. of 6-24-97)

Sec. 10-2-84. Construction of water and sewer lines prerequisite to improvement and maintenance of streets by city.

No part of any proposed subdivision within the city and no way proposed to be opened as a street within the city shall be taken over by the city for improvement or maintenance, nor considered a part of the public streets of the city, and no part of the public revenues shall be expended thereon, unless and until there shall have been constructed therein, without expense to the city, water lines and sewer lines accepted by the city engineer, of such capacity and location as to furnish adequate service to the property in such subdivision or abutting upon such street, when the same shall have been occupied. The city engineer shall refuse permission to connect same to any city mains or lines until such lines meet with his approval and specifications as to the size and location thereof.

(Ord. of 6-24-97)

Sec. 10-2-85. Rights of city in water and sewer lines.

Whenever any water or sewer line shall be constructed or laid in any proposed subdivision or in any way proposed to be used as a public street, or whenever any water or sewer line is constructed to be used for connection therewith by a number of persons, such water or sewer line, after it shall have been connected with other or existing lines of the city, shall be deemed to be the property of the city, and the city, subject to the provisions of sections 10-2-83 and 10-2-84, shall have sole control of its maintenance and of connections to be made therewith by persons desiring to use the same.

(Ord. of 6-24-97)

Sec. 10-2-86. What streets deemed dedicated.

Any street or alley designated in the subdivision into lots of any portion of the territory within the corporate limits of the city by a plat or plan of record shall be deemed and held to be dedicated to public use, unless it appears by such record that the street or alley so designated is reserved for private use.

(Ord. of 6-24-97)

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City of Harrisonburg, Virginia
Zoning Ordinance

Revised Draft Amendments

Prepared 11-14-11
as part of the VDOT Local Assistance Grant
for Urban Development Areas

New language is shown as underline; language proposed for
deletion is shown as ~~strike-through~~



RENAISSANCE PLANNING GROUP



Draft

City of Harrisonburg, Virginia

CHAPTER 3. ZONING*

*Editor's note: An ordinance adopted and approved Apr. 23, 1996, amended and re-enacted Tit. 10, Ch. 3 in its entirety to read as herein set out. Prior provisions pertained to similar subject matter and was derived from the following ordinances:

| Adoption Date | Adoption Date |
|---------------|---------------|
| 10-24-89 | 4-13-93 |
| 12-12-89 | 5-10-94 |
| 1-9-90 | 8-22-95 |
| 3-12-91 | 1-23-96 |
| 11-26-91 | 2-27-96(4) |

Charter references: Authority to adopt ordinance dividing city into zones in accordance with state law, § 21.

State law references: Zoning generally, Va. Code, §§ 15.1-486--151.498.

Article A. Title, Application, Purpose, Interpretation

Sec. 10-3-1. Title.

This chapter shall be known as the Zoning Ordinance for Harrisonburg, Virginia.
(Ord. of 4-23-96)

Sec. 10-3-2. Application.

This chapter shall apply to the incorporated territory of the City of Harrisonburg, Virginia. It is the intent of this chapter that the extent of its applicability be automatically changed in accordance with the provisions hereof or provisions of state law which may affect the applicability of this chapter.
(Ord. of 4-23-96)

Sec. 10-3-3. Purpose.

The zoning regulations and districts as herein established have been made in accordance with a comprehensive plan, to promote, in accordance with present and future needs, the health, safety, morals, order, convenience, prosperity and general welfare of the citizens of Harrisonburg, Virginia, and to provide for efficiency and economy in the process of development; for the appropriate and best use of land, for convenience of access and of traffic and circulation of people and goods; for the appropriate use and occupancy of buildings; for healthful and convenient distribution of population; for protection against overcrowding of land, undue density of populations in relation to the community facilities existing or available, destruction of or encroachment upon historic areas, obstruction of light and air, or loss of life, health or property from fire, flood, panic or other dangers; to encourage good civic design and arrangement; to facilitate the creation of a convenient, attractive and harmonious community and for adequate public utilities, public services and facilities, by regulating and limiting the height and bulk of buildings and structures, the area of yards and other open spaces, and the density of use. They have been made with reasonable consideration, among other things, for the existing use and character of property, the comprehensive plan, to the character of the district and its peculiar suitability for particular uses, to trends of growth or change, and with a view to conserving natural resources and the value of land and building and encouraging the most appropriate use of land throughout the incorporated territory of the City of Harrisonburg, Virginia.
(Ord. of 4-23-96)

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Sec. 10-3-4. Interpretation.

In interpreting and applying the provisions of this chapter they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity or general welfare. It is not intended by this chapter to interfere with, or abrogate or annul, any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger open spaces than are imposed or required by other resolutions, ordinances, rules, regulations, or by easements, covenants or agreements the provisions of this chapter shall govern.
(Ord. of 4-23-96)

ARTICLE B. DISTRICTS AND DISTRICT MAPS

Sec. 10-3-5. Establishment of districts.

(a) For the purpose of this chapter the City of Harrisonburg is divided into districts as follows:

| | |
|------|--|
| R-1 | Single-Family Residential District. |
| R-2 | Residential District. |
| R-3 | Multiple-Dwelling Residential District. |
| R-3 | Medium Density Residential District. |
| R-4 | Planned Unit Residential District. |
| R-5 | High Density Residential District. |
| R-6 | Low Density Mixed Residential Planned Community District. |
| R-7 | Medium Density Mixed Residential Planned Community District. |
| MX-U | Mixed Use Planned Community District. |
| MH-1 | Manufactured Home Park District. |
| MH-2 | Manufactured Home Subdivision District. |
| B-1A | Local Business District. |
| B-1 | Central Business District. |
| B-2 | General Business District. |
| M-1 | General Industrial District. |
| I-1 | Institutional Overlay District. |
| U-R | Urban Residential District. |
| R-P | Residential-Professional District. |

(b) The purpose statements which accompany each district are intended to describe in a general way the character of uses to be encouraged in the district, to assist with selection of appropriate districts for application to various conditions of land use, existing or planned, and with interpretation of questions which may arise with respect to particular land uses in particular locations. In any case of difference between the purpose statement and the use regulations for the district the use regulations shall control.

(c) The land use plan, as recommended and certified by the Harrisonburg City planning commission, as required by law, is hereby adopted and made a part of this chapter, and shall be on file in the office of the city planning commission, and is made a part of this chapter by reference.
(Ord. of 4-23-96)

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Sec. 10-3-6. Zoning map generally.

The boundaries of the zoning districts are hereby established as shown on the map of the City of Harrisonburg, which said zoning map is located in the office of the city engineer, planning director and office of the zoning administrator, and which is recommended and certified by the Harrisonburg planning commission as required by law. Said map, as amended, is hereby made a part of this chapter by reference.
(Ord. of 4-23-96)

Sec. 10-3-7. Zoning map interpretation.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

- (1) Where district boundaries are indicated as approximately following the centerlines of streets or highways or railroad right-of-way lines, such lines extended shall be construed to be boundaries.
- (2) Where district boundaries are indicated as approximately following the corporate limits line of the City of Harrisonburg, such corporate limits shall be construed to be the district boundary.
- (3) Where district boundaries are indicated as approximately parallel to the street lines of streets or highways, such district boundaries, unless otherwise specifically indicated, shall be construed as being parallel thereto and at a distance determined by use of the scale appearing on the block map.
- (4) Where district boundaries are indicated as approximately following the centerline of stream beds, such centerline shall be construed to be the boundaries.
- (5) Where district boundaries are indicated as dividing subdivided parcels of land under common ownership, such boundaries shall be determined by use of the scale appearing on the block map, or modified by the board of zoning appeals pursuant to section 10-3-112.
(Ord. of 4-23-96)

Sec. 10-3-8. Annexed territory.

Any territory hereafter annexed by the City of Harrisonburg, shall continue to be subject to the county district classifications and regulations as such territory was subject at the time of annexation until otherwise changed by ordinance. If no district classifications and regulations existed at the time of annexation, such territory shall be considered as being in the R-1 single-family residential district until otherwise changed by ordinance.

ARTICLE C. ADMINISTRATION AND ENFORCEMENT

Sec. 10-3-9. Enforcement.

It shall be the duty of the zoning administrator and such deputies as are appointed by him to enforce the provisions of this chapter and to refuse to issue any permit for any building, or for the use of any premises, which would violate any of the provisions of this chapter. It shall also be the duty of all officers and employees of the city to assist the enforcing officer by reporting to him any seeming violation in new construction, reconstruction or land uses.
(Ord. of 4-23-96)

Sec. 10-3-10. Building permits.

- (a) A building permit issued by the building and zoning office is required in advance of the initiation of construction of any building or structure. All applications for the building permits shall be accompanied by a site plan in duplicate drawn to scale, showing the actual size of building to be erected, the location of the building on the lot, the number of dwelling units the building is designed to accommodate, the setback lines of buildings on lot or lots, and such other information concerning the lot or lots as may be essential for determining whether the provisions of this chapter are being observed.
- (b) All applications for building permits shall be kept by the building and zoning office. Upon approval, all shall become a matter of public record.
(Ord. of 4-23-96)

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Sec. 10-3-11. Certificate of occupancy.

(a) A building hereafter erected under the expressed conditions of a building permit, with the exception of accessory buildings not intended for human occupancy, shall not be occupied in whole or in part until a certificate of use and occupancy, hereafter known as an occupancy permit, has been issued by the office of the building official. Said permit shall certify compliance with current administration requirements as stated within the documents known as the Virginia Uniform Statewide Building Code. In addition, the occupancy permit shall also certify applicable compliance with current zoning regulations as attested by the zoning administrator.

(b) An existing building hereafter enlarged, structurally altered and/or changed in use under the expressed conditions of a building permit, with the exception of accessory buildings not intended for human occupancy, shall not be occupied in whole or in part until an occupancy permit has been issued by the same official which shall certify building and zoning compliance under the same applicable state and city regulations. For the purpose of zoning interpretation, the conversion of single-family residential function to multifamily or other tenant facilities shall constitute a change in use.

(Ord. of 4-23-96)

Sec. 10-3-12. Use, area, etc., generally.

Except as provided in this section:

(1) No building or land shall be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as hereinafter provided.

(2) Every building hereafter erected or structurally altered shall be located on a lot as herein defined, and in no case shall there be more than one building on the lot used for dwelling purposes except as otherwise provided. (See Group Housing Project definition)

(3) No lot shall be reduced in size so that width, yard requirements, lot area per dwelling unit or other requirements of this chapter are not maintained

(Ord. of 4-23-96)

Sec. 10-3-13. Penalties.

Any person found in violation of any provision of this chapter, upon conviction be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).

(Ord. of 4-23-96)

ARTICLE D. SITE PLAN REVIEW

Sec. 10-3-14. Regulations.

Site plan review shall be required in addition to the other applicable requirements of this Code before building permits will be issued.

(Ord. of 4-23-96)

Sec. 10-3-15. Purpose and intent.

The intent of these regulations is to provide for a review of:

(1) The project's compatibility with its environment and with other land uses and buildings existing in the surrounding areas.

(2) The quantity, quality, utility, size and type of the project's common space, impact upon existing natural environment and proposed landscaping improvements.

(3) The ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians.

(4) The location and adequacy of the project's provision for drainage and utilities.

(5) The protection of public safety and location and adequacy of necessary utilities, drainage, and

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erosion and sediment controls.

(Ord. of 4-23-96)

Sec. 10-3-16. Conditions for site plan review.

(a) Site plans involving rezoning or subdivision shall be submitted to the office of the city planner in sufficient time for conducting staff review, prior to consideration by the planning commission.

(b) Site plans involving review for compliance with current regulations shall be submitted to the office of the zoning administrator at least twenty (20) working days prior to a decision regarding the building permit.

(c) The zoning administrator may waive site plan review by city staff and also fees where it can be clearly shown that the application for the building permit involves building and safety regulations rather than "substantial zoning interpretation." Minor residential alterations or additions, construction and placement of accessory buildings, etc., which are not critical to the purpose and intent of the city zoning ordinance, may be waived.

(d) The following fees shall be required for site plan review unless otherwise waived by this section. Such fee is payable upon submission of the site plan(s) for review:

(1) Site plan of all new commercial, industrial and institutional sites: \$300.00 plus \$25.00 per acre or portion thereof.

(2) Site plan for new multifamily residential and all other residential: \$400.00 plus \$10.00 per dwelling unit.

(3) Revised site plan: \$100.00 each submittal.

(4) Resubmittal of rejected site plan: Same as (1) or (2) above.

In addition, if the site plan requires a traffic impact analysis review by the Virginia Department of Transportation (VDOT), then all additional fees for that review shall be made payable to the Virginia Department of Transportation. If the site plan requires a traffic impact analysis review, only by the city, then one thousand (\$1,000.00) shall be made payable to the city. The site plan application shall not be considered accepted until the TIA has been reviewed.

(e) An approved site plan shall expire and be null and void unless a building permit for the construction of the same substantial elements of the site plan has been issued within a period of one year.

(Ord. of 4-23-96; Ord. of 7-22-08(4))

Sec. 10-3-17. Comprehensive site plan review.

(a) The site plan shall include items (1), (2) and (3) below:

(1) The proposed title of the project and the names of the engineer, architect, surveyor and other applicable professional services and the name of the developer.

(2) The north point, scale, date, vicinity map, gross acreage or square footage of the area to be developed and metes and boundary description of said area.

(3) Existing zoning and zoning district boundaries on the property to be developed and on immediately adjacent properties.

(b) In cases of subdivision where parts of this section do not apply, the planning director may waive certain requirements if provisions of the city subdivision ordinance are met.

(c) In addition, site plans which are considered for rezoning or overall approval for a plan of development shall contain the following:

(1) All existing property lines, setback lines, existing and proposed streets and other existing and proposed physical features within the project.

(2) Topography of the project area with contour intervals of five (5) feet or less may be required to address potential problems of contours and grade, such as drainage controls, etc.

(3) The proposed nature and manner of grading of the site, including proposed treatment of slopes in excess often (10) percent, to prevent soil erosion and excessive runoff. In cases where erosion and sedimentation control is required, the necessary plans and data shall be submitted.

(4) The location and dimensions of proposed recreation areas, open spaces and other amenities and improvements beyond natural physical features.

(5) The location, character and orientation of principal proposed signs as proposed to be erected in

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accordance with district regulations and the city sign ordinance. Signs which are approved in accordance with this section shall be considered a part of the site plan. Thereafter, supplementary signs shall be in compliance with the city sign ordinance and district regulations.

- (6) Adequate lighting shall be provided for proposed developments and lighting installations shall not have an adverse impact on traffic safety or on the character of the surrounding neighborhood
 - (7) The location and screening for dumpsters or other outdoor trash facilities.
 - (8) The proposed and required off-street parking and loading areas relative to other physical features (i.e. buildings, etc.).
- (Ord. of 4-23-96)

Sec. 10-3-18. General standards.

In addition to other requirements of this chapter and other regulations of the city, the comprehensive site plan review will evaluate the following:

- (1) The unnecessary destruction of trees and other natural features.
 - (2) Adequate screening along common boundaries where necessary.
 - (3) Preservation and treatment of on-site natural watercourses
- (Ord. of 4-23-96)

Sec. 10-3-19. Amendments to approved site plan.

If an approved site plan is changed, the applicant's request can be either administratively approved or, if the proposed change will substantially affect the terms of the original approval, an amended site plan shall be submitted for review by the appropriate body.

(Ord. of 4-23-96)

ARTICLE E. NONCONFORMING BUILDINGS AND USES

Sec. 10-3-20. Continuance of nonconforming use of building.

Any structure or use of land existing at the time of the enactment or subsequent amendment of this chapter, but not in conformity with its regulations and provisions, may be continued.

- (1) In the event that a nonconforming use of any building or premises is discontinued or its normal operation stopped for a period of twenty-four (24) consecutive months or more, the use of the same shall thereafter conform to the regulations of the district in which it is located, and other applicable provisions of this chapter.
- (2) A nonconforming use shall not be extended, enlarged, reconstructed or structurally altered except in conformity with this chapter when required to do so by law or ordinance or when the enlargement does not compound the existing violation.

Sec. 10-3-21. Reserved.

Sec. 10-3-22. Enlargement or restoration of nonconforming buildings.

- (a) No building which is nonconforming for reasons other than use, such as setbacks or other site conditions, shall be restored or changed to another nonconforming use after damaged beyond fifty (50) percent of the fair market value of the building prior to damage. It shall be the duty of the building official to establish market value.
- (b) Nonconforming buildings for reasons other than use, which have been issued a building permit prior to annexation or amendments to this chapter, shall be permitted under the conditions of said permit, but thereafter held to the conditions herein.
- (c) An existing porch or carport with a roof that is nonconforming as to height or setback regulations but devoted to a conforming use may be enclosed, provided that such addition does not compound the existing nonconformity as to setback and height regulations. In the event that enclosing of the porch or

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carport creates a public safety problem, such enclosure shall not be allowed.

(Ord. of 4-23-96; Ord. of 2-25-97)

ARTICLE F. DEFINITIONS

Sec. 10-3-23. General rules of construction.

The following general rules of construction shall apply to the regulations of this chapter:

- (1) The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
 - (2) The words used in the present tense include the past and future tenses, and the future the present.
 - (3) The word "shall" is always mandatory. The word "may" is permissive.
 - (4) The word "building" or "structure" includes any part thereof, and the word "building" includes the word "structure."
 - (5) Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.
 - (6) The terms "main" and "principal" as used herein are synonymous.
- (Ord. of 4-23-96)

Sec. 10-3-24. Definitions.

For the purpose of this chapter, certain terms and words are hereby defined:

Accessory: As applied to use or structure, means customarily subordinate or incidental to, and on the premises of such use or structure. The words "on the premises of" mean on the same lot or on the contiguous lot in the same ownership.

Accessory living unit: A portion of a detached single-family dwelling unit to include such incidental and subordinate facilities necessary to accommodate either relatives, nontenant employees, or no more than two (2) persons.

Acreage: A parcel of land, regardless of area, described by metes and bounds and not a lot of any recorded subdivision plat.

Addition: Any construction which increases the area of cubic content of a building or structure. The construction of walls which serve to enclose completely any portion of an existing structure, such as a porch, shall be deemed an addition within the meaning of the chapter.

Administrator: The zoning administrator of the City of Harrisonburg as designated by resolution of the city council.

Adult bookstore/videostore : An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals and/or videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or any other similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas" or are intended for the sexual stimulation or titillation of patrons.

Adult business : Adult bookstore/videostore, adult mini-motion picture theater, adult motion picture theater, adult store, a business providing adult entertainment or any other establishment, including without limitation any adult modeling studio, adult cocktail lounge or adult nightclub, that regularly emphasizes an interest in matter relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult day care center: A building or structure where care and supervision are provided on a regular schedule for disabled adult persons and/or senior citizens for less than twenty-four (24) hours per day.

Adult entertainment : Dancing, modeling or other live performances if the performers' performance is

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characterized by an emphasis on specified anatomical areas or specified sexual activities, or is intended for the sexual stimulation or titillation of patrons. Also includes the showing of films, motion pictures, video cassettes, slides, photographic reproductions, virtual reality devices, internet sites or files transmitted over the Internet, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult merchandise : Magazines, books, other periodicals, videotapes, movies, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas or are intended for the sexual stimulation or titillation of patrons. Also includes toys, novelties, instruments, devices or paraphernalia either designated as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs and lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

Adult mini-motion picture theater : An enclosed building with a capacity of less than fifty (50) persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Adult motion picture theater : An enclosed building with a capacity of fifty (50) or more persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Adult store : An establishment having adult merchandise as a substantial or significant portion of its stock-in-trade.

Alley: Any passage or way open to public travel, affording generally a secondary means of vehicular access to abutting lots and not intended for general traffic circulation.

Alteration: Any material change in the floor area, use, adaptability or external appearance of an existing structure.

Apartment building: See "Dwelling, multiple."

Assisted living facility: Residential facilities with ninety (90) percent occupancy by persons sixty (60) years or more of age that provide rooms, meals, personal care and supervision of self-administered medication.

Basement: A story at least one-half (1/2) its height below grade. A basement is not counted as a story for the purpose of height regulations.

Bed and breakfast facilities: A single-family dwelling (including the principal residence and related buildings), occupied by the owner or proprietor, in which accommodations limited to ten (10) or less guest rooms are rented for periods not exceeding ten (10) consecutive days per guest.

Board: The board of zoning appeals.

Boardinghouse or rooming house: A single detached dwelling, where the property owner or property lessee/operator resides on the premises, and where for compensation and by prearrangement, for definite periods, lodging and/or meals are provided for three (3) persons to a maximum of ten (10) persons. The resident property owner or resident property lessee, who operates the boardinghouse or rooming house, shall be responsible for making an application for any required special use permit. A boardinghouse or rooming house must obtain an annual business license as required by the Harrisonburg City Code and the boardinghouse or rooming house shall also be in compliance with the Virginia Maintenance Code (VMC). The responsible party shall schedule a yearly inspection that shall be conducted between October 1st and October 31st to ensure compliance with the current VMC and other applicable regulations. Should the

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property not comply with the VMC or other regulations, a specified time shall be given to make corrections. If the corrections are not made within the allotted time, or if the responsible party fails to have the property inspected by October 31st, the special use permit shall automatically expire and become null and void. Operation of a boardinghouse or rooming house shall not be deemed a home occupation.

Building: Any structure intended for shelter, housing or enclosure of persons, animals, chattels or property of any kind.

Building area: The portion of a lot remaining after required yards have been provided.

Building, community: A building for social, educational and recreational activities for a neighborhood or community, provided any such use is not operated primarily for commercial gain.

Building, height of: The vertical distance measured from the floor closest to curb grade to the level of the highest point of the roof surface, if the roof is flat or inclines not more than one (1) inch vertical to one (1) foot horizontal, or the mean level between the eaves and the highest point of the roof if the roof is of any other type.

Building, principal: A building which contains the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be a main building.

Building, public: A building owned (or leased) by a governmental agency and used for governmental functions.

Building setback line: A line establishing the minimum allowable distance between the nearest portion of any building, excluding any uncovered porches, steps, patios, fences, etc., and similar fixtures.

Bus shelter: A structure located at a designated transit stop designed primarily for the shelter of transit bus passengers.

Child day care center: A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Church : Church as used in the adult business sections of this Code is defined as an organization consisting of a minimum of twenty-five (25) persons, who have made a public confession of religion and who are associated together by a covenant of church fellowship for the purpose of celebrating and uniting in their faith and watching over the spiritual welfare of each other and which owns its church building in fee simple or otherwise leases an existing church building.

Clinic: An establishment where patients, who are not lodged overnight, are admitted for examination and treatment by one (1) or more physicians practicing medicine, dentistry or psychiatric treatment.

Club: A building or portion thereof or premises owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

Commission: The city planning commission.

Communications tower: A structure that is intended to send and/or receive radio, television and other telecommunications signals.

Condominiums: Real property and any incidentals thereto or interests therein which have been or are to be lawfully established as such under the Virginia Condominium Act.

Convenience store: A small commercial shopping facility designed as a component of the neighborhood or

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district in which it is located.

Curb grade: The elevation of the established curb in front of the building measured at the midpoint of such frontage. Where no curb exists, the city engineer shall establish such curb grade for the existing or proposed street in accordance with the existing street grading plans of the city.

Density : The total number of dwelling units divided by the area in acres of all land within a development dedicated to residential uses, including residential lots and buildings and the streets, parking areas, landscape areas, parks and open space serving the residential uses.

District: Any section of the City of Harrisonburg for which the regulations governing the use of the buildings and premises, the heights of building, the size of yards and the intensity of the use are uniform.

Drive-through facility: (same as "Drive-In"): Any portion of a building or structure from which customers can receive a service or obtain a product while in their motor vehicle. Regulated as a subordinate use to a principle use, regardless of the nature of the principle use.

Driveway: That space specifically designated and reserved on the site for the movement of vehicles from one site to another or from a site to a public street.

Dwelling: A building or portion thereof which is designed or used exclusively for residential purposes.

Dwelling, single-family: A building occupied by or designed for occupancy by one (1) family or occupancy as described by the specific zoning district.

Dwelling, duplex: Two (2) connected dwelling units where each is designed for one (1) family or occupancy as described by the specific zoning district.

Dwelling, multiple-family: A building comprised of at least three (3) dwellings, not separated by a property line, where each unit is designed for one (1) family or occupancy as described by the specific zoning district.

Dwelling, quadraplex: A type of attached multiple dwelling containing four (4) attached dwelling units in one (1) building with each unit having a minimum of two (2) outside walls and sharing one (1) or more walls with an adjoining unit or units. These dwellings would be designed and constructed to permit individual and separate ownership of lots and dwellings or combinations of dwelling units.

Dwelling, townhouse: Unless otherwise specified within a zoning district, a townhouse is one (1) of a series of at least three (3) attached dwelling units, not to exceed eight (8), for rent or sale, separated from one another by common walls and property lines without openings from basement floor to roof and having varied but compatible elevations, and with not more than two (2) abutting dwelling units having the same front yard setback. The lots, utilities and other improvements for each "townhouse" would be designed to permit individual and separate ownership of such lots and dwelling units.

Dwelling, unit: One (1) or more rooms located within a building and forming a singular unit with facilities which are used or intended to be used for living, sleeping and dining purposes. A dwelling unit shall have customary kitchen facilities. An efficiency apartment unit is defined as a dwelling unit. Dwelling units which will be occupied for predetermined periods of time of more than one (1) month in succession shall be termed nontransient dwelling units.

Dwelling unit(s), CBD: One (1) or more dwelling units of nontransient occupancy within the Central Business District (CBD) that are designed to promote the most desirable uses and rehabilitation of the district.

Facade, front: The principal frontage of a building which, by either aesthetic attention, main entry and

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egress, or the longitudinal dimension of the structure, becomes the primary frontage.

Facade, rear: That portion of a building which is, by either service area, secondary entry and egress or the facade directly opposite the front facade of the structure, the reverse frontage of the building.

Family: One (1) or more persons occupying a dwelling and living as a single housekeeping unit, all of whom are related to each other by birth, adoption or marriage as distinguished from a group occupying a boardinghouse, roominghouse or hotel as herein defined.

Family day home, major: A child day care program offered in the residence of the provider or the home of any of the children in care for six (6) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.

Family day home, minor: A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through five (5) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.

Financial institution and offices: Any building wherein the primary occupation is concerned with such state regulated businesses as banking, savings and loans, loan companies and investment/securities companies.

Floor area: The gross horizontal areas of all floors, including basements, cellars and attics (but not such areas within a building which are used for parking), measured from the exterior faces of the exterior walls of a building.

Floorplate : The horizontal land area occupied by a building at finished grade including projections and overhangs.

Fraternity or sorority house: A single detached dwelling being occupied by persons who are members of a fraternity, sorority, association or group chartered for social, educational, religious or service purposes.

Fraternity or sorority house in R-3 zones: A building or any portion thereof being lived in for dwelling purposes by a fraternity, sorority, association or group of more than three (3) persons, but not more than ten (10) persons, who are associated or formally organized for social, educational, religious or recreational purposes, and subject to the same permit and license requires as needed for operating a boarding or roominghouse. (See sections 11-4-3 and 12-1-10(24) of this Code.)

Funeral home: A building used for the preparation of corpses for burial or for cremation which may also be used for funeral services.

Garage, storage, or parking: A building or portion thereof designed or used exclusively for storage or motor-driven vehicles.

Group housing project: A group housing project shall consist of two (2) or more buildings located on a site where the building arrangement is such that the property cannot be subdivided into conventional streets and lots that meet the requirements of this chapter and chapter 2 of this title.

Historic area: An area or existing site containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

Home occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building by a

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member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

Hotel, motel and similar transient housing: A building or group of buildings which are designed or intended to be used or hired out on weekly basis, primarily for transient or temporary occupancy.

Housing: See "Dwelling."

Industrialized building: A combination of one (1) or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in the Code of Virginia and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

Institution: A nonprofit corporation or a nonprofit establishment whose purpose is civic, educational, charitable, religious or philanthropic in nature.

Junk yard: Any space or area or portion of lots used for the storage, sale, keeping or abandonment of junk or waste materials, including used building material, for the dismantling, demolition, sale or abandonment of automobiles and other vehicles, machinery or parts thereof.

Lot: A parcel of land occupied or intended to be occupied by a use permitted in this chapter, including one (1) main building together with its accessory buildings, and the yards and parking spaces required herein, and having its principal frontage upon a street or upon an officially approved place.

Lot area: The total horizontal area within the lot lines of a lot. No existing alley, public way, public land or area proposed for future street (alley) purposes is included within the net area of a lot. On-site easements are included in the land area of a lot.

Lot depth: The average horizontal distance between the front and rear lot lines.

Lot of record: A lot which has been recorded in the office of the clerk of the circuit court.

Lot, nonconforming: An otherwise legally platted lot that does not conform to the minimum area of width requirements of this chapter for the district in which it is located either at the effective date of this chapter or as a result of subsequent amendments to this chapter.

Lot, width: The distance between side lot lines measured at the building line.

Manufactured home: A structure subject to federal regulation, which is transportable in one (1) or more sections; is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Manufactured home sales and service establishment: Use of land whereon the primary occupation is the sale and ancillary service of manufactured homes. This use shall not include storage of nonhabitable manufactured homes for a period of time exceeding ninety (90) days.

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Manufactured home park: An area designed, constructed, equipped, operated and maintained for the purpose of providing spaces for two (2) or more manufactured homes intended to be used as living facilities.

Net development area: The total area of land in the MX-U development designated on the master development plan for residential, nonresidential, or open space uses, excluding streets.

Nonconforming use: Any building or land lawfully occupied by a use at the time of passage of this section or amendment thereof which does not conform after the passage of this section or an amendment thereto with the regulations of the district in which it is situated.

Nursing home: A home for the aged, or infirm, senile, chronically ill or convalescent in which persons not of the immediate family are received, kept or provided with food, shelter, treatment and care for compensation, but not including hospitals, clinics or similar institutions.

Open space, common : Land within a private development set aside, dedicated and designed to protect natural environmental resources, to serve as a visual amenity, and/or to provide recreational opportunities that is owned by a property owners association and is designed and intended for the common use or enjoyment of the residents of the development. Such land shall be primarily naturally vegetated or landscaped, but may include limited paved areas, such as sidewalks, pedestrian plazas, trails, and recreational courts. Such land shall not include streets, street rights-of-way, driveways, parking areas, structures, above ground public utilities, including stormwater management facilities, or other improvements, except as may be approved for recreational or historic preservation purposes in a development plan or site plan.

Parking lot: A defined area for the storage of operable motor-driven vehicles and operable accessory vehicles.

Parking, off-street: Any on-site space specifically allotted to or required for the parking of motor vehicles.

Parking space: The area required for parking one (1) automobile which shall be a minimum of nine (9) feet wide and eighteen (18) feet long, not including passageways.

Parking unit, private: A self-contained and privately maintained area accessed by a public street but allowing no through traffic routes and providing such off-street parking as may be required under this chapter for the building served. Said parking unit may be entered by a private drive from the public street; provided, that such drive offers adequate ingress and egress for emergency vehicles and otherwise complies with acceptable city standards.

Plan of development: A sketch of the site drawn to scale, showing the dimensions and acreage of the property, and approximate location of buildings, roads, parking areas and landscaping, the number of dwelling units or commercial or other types of buildings and other information essential for determining whether the provisions of this chapter are being observed, such as pertinent site engineering data.

Plant nurseries and greenhouses: A facility where plants and landscaping materials are raised and/or sold. Such uses must be served by a permanent building. A plant nursery may include the storage of materials used for installation of landscaping materials.

Plat: A drawing, map or plan for a parcel of land or subdivision, or rearrangement, revision or resubdivision of land.

Premises: A parcel of land, together with any building or structures occupying it.

Private club: An association organized and operated on a nonprofit basis for persons who are bona fide members paying dues, with which the association owns or leases premises, the use of which premises is restricted to such members and their guests, and which manages the affairs of such association by and

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through a board of directors, executive committee, or similar body chosen by the members. Food, meals and beverages may be served on such premises, provided adequate dining space and kitchen facilities are available. This definition includes country clubs.

Professional offices: Offices limited to personal services customarily performed by professionals such as doctors, dentists, architects, engineers, lawyers, accountants, real estate agents, insurance agents and brokers, who are not dependent on extensive on-site advertising.

Property owners' association: A non-profit organization or other legal entity established and constituted in accordance with the Virginia Property Owners' Association Act.

Public floor area: The gross building area, as figured on a per-story basis, which clearly serves the general public, such as vestibules and lobbies, corridors, waiting rooms and toilets, servicing areas, and required stairs, ramps and elevators. Employee oriented areas, such as kitchens and freezer rooms, storage, maintenance and service areas, shall not apply. Unfinished areas shall be included and figures on the basis of potential use.

Public use: Any instance where a lot or parcel of land, or any improvement on a lot or parcel of land, is used by (1) the city, or (2) another governmental entity having a contractual relationship with the city for the use of such lot or parcel or improvement.

Right-of-way lines: Lines which separate private property from dedicated public property containing or proposed to contain publicly owned street surfaces, curb and gutter, sidewalks and planted strips. Where a public street is designated on the major thoroughfare plan, all requirements of this chapter which relate to rights-of-way shall be measured from the indicated proposed right-of-way lines.

Screening: The use of fences, decorative walls or other physical or structural enclosures or plant material to separate uses and hide from view materials which require screening. Screening shall be required for outside storage areas only when called for by the zoning ordinance. Fences, decorative walls or other physical or structural enclosures used for screening shall be opaque to obstruct view of storage materials, with the finished face facing outside, and shall be at least six (6) feet in height with a maximum of eight (8) feet in height. If plant materials are used for screening purposes, they shall be three (3) to four (4) feet in height at planting time and shall otherwise meet the same intent as stated for fencing, etc. with the exception of height described herein. Screening, including walls and plant material, for parking lots and garages adjacent to public streets may be a minimum of four (4) feet in height rather than six (6) feet as specified above for other types of screening.

Setback: The minimum distance by which any building or structure must be separated from all lot lines.

Shopping center: Commercial development of more than one (1) retail sales or service establishment on a single parcel of common ownership attached by common walls or if located in separate buildings are interconnected by walkways and/or access ways, providing common parking facilities for all establishments, having multiple tenancy of a single or several large common structures, and otherwise present the appearance of one continuous commercial area.

Site plan: Refer to article D for site plan review.

Specified anatomical areas : (1) Less than completely and opaquely covered: (i) human genitals, pubic region, buttock; and (ii) female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities : (1) Human genitals in a state of sexual stimulation or arousal. (2) Acts of human masturbation, sadomasochistic abuse, sexual penetration with an inanimate object, sexual intercourse or sodomy. (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

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Steep slopes: Natural slopes prior to land disturbance or construction that exceed fifteen (15) percent (0.15). Such slopes are measured as the rise in elevation over the horizontal distance between contour lines on a topographic map with a contour interval of five (5) feet or less.

Street: A public thoroughfare which affords the principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley which is designated or dedicated for public use.

Structure: Anything constructed or erected, the use of which requires location on the premises or which is attached to something having location on the premises.

Structural alteration: Any change in the supporting members of a structure, such as bearing walls or partitions, columns, beams, or girders.

Structure, nonconforming: An otherwise permitted building or structure that does not conform with the lot area, yard, height, lot coverage or other regulations of this chapter.

Variance: A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

Vehicle fuel station: Any building, structure, or land used for the dispensing, sale or offering for sale at retail of any vehicle fuels, oils or accessories.

Vehicle, inoperable: Any vehicle not capable of being used on public streets or roads and/or on which a state inspection and/or license is not displayed or has expired for more than thirty (30) days.

Vehicle repair: Premises where mechanical, bodywork, or other similar work is performed on vehicles.

Vehicle sales: Premises where the primary occupation is the sale or rental of any vehicle and can include ancillary service or repair of any vehicle. Such use may include the storage of inoperable vehicles for a period not to exceed ninety (90) days.

Yard: A space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from ground to sky except where encroachment and accessory buildings are expressly permitted herein.

Zoning district: See "District."

Zoning administrator: See "Administrator."

(Ord. of 4-23-96; Ord. of 10-28-97; Ord. of 2-10-98; Ord. of 6-9-98; Ord. of 1-12-99; Ord. of 2-22-02; Ord. of 3-26-02; Ord. of 9-24-02; Ord. of 8-12-03; Ord. of 6-14-05; Ord. of 10-25-05; Ord. of 8-14-07; Ord. of 11-25-08(1); Ord. of 2-24-09(1); Ord. of 4-28-09(3); Ord. of 6-23-09(3))

ARTICLE G. OFF-STREET PARKING

Sec. 10-3-25. Off-street parking regulations.

Off-street parking requirements shall be met as stated herein for all new buildings and structures and all existing building types included herein which are hereafter enlarged, altered and/or changed in use. For

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the purpose of implementation of this section, "well-defined" shall mean the appropriate use of surface materials for vehicle use that clearly establishes and delineates the limits of parking areas and avoids off-site drainage conditions. Exemptions and modifications may apply as stated within this section, in accordance with the following requirements:

- (1) Definition of a "parking space": The area required for accommodating one (1) automobile or other motorized vehicle on private property, which shall be a minimum of nine (9) feet in width and eighteen (18) feet in length, not including passageways. Twenty-five (25) percent of the total parking provided may be designated for compact automobiles. Compact spaces shall be a minimum of eight feet by seventeen feet (8'17") for regular spaces and eight feet by twenty feet (8'20") for parallel spaces and that all such compact car spaces be clearly marked, using vertical signage, with the wording "Compact Cars Only."
- (2) Definition of a "Parking Lot": A tract of land which is used for the temporary storage of motor vehicles or accessory vehicles.
- (3) Definition of "Landscaping for Parking Lots": All parking lots for new buildings other than industrial sites requiring more than ten (10) parking spaces shall include well-defined and well-maintained landscaped areas equal to at least fifteen (15) percent of the total area to be used for parking, maneuvering and driveways on site. Parking spaces shall be separated from all right-of-way lines and property lines by a landscaped border not less than ten (10) feet in width or appropriate visual elements such as walls or fencing, except along adjoining lot lines which lie within a shared parking arrangement approved by a special use permit allowing for a zero side yard setback. Landscaping interior to the parking area or within a thirty-foot perimeter of the parking area shall be permitted to count towards meeting the fifteen (15) percent requirement. It is required that hardy trees or shrubs which are regional species be planted or saved, and that all plantings and ground cover be either maintained or replaced.
- (4) Definition of "Landscaping for Shopping Center Parking Lot": Shopping centers, as defined, shall provide well-defined and well-maintained landscaped areas equal to at least fifteen (15) percent of the total approved parking area which shall include not less than ten-foot-wide landscaped borders or appropriate screening adjoining all right-of-ways and property lines. Until the fifteen (15) percent requirement is met, rows of parking spaces shall be divided at intervals of from eight (8) to twelve (12) parking spaces by a landscaped area at least five (5) feet in width and at least fifteen (15) feet in length. Intent of landscaping under subsection (3) shall apply.
- (5) Where a creation of a paved or graveled parking lot may cause stormwater runoff due to grade conditions, review and approval by the city engineer's office is necessary before the improvement is to be made.
- (6) In addition to the number of parking spaces required for new uses under this section, a change in use from existing single-family dwellings to permitted multifamily housing units or other tenant housing facilities shall meet the following requirements:
 - a. Off-street parking spaces shall not be located within the established front yard area between the front property line and the building itself.
 - b. All areas on-site which comprise the off-street parking plan shall be visually defined by appropriate use of surface materials for vehicular uses which shall be duly maintained.
- (7) In addition to the number of parking spaces required by use under this section, nonresidential uses permitted in residential districts shall meet the following requirements:
 - a. Nonresidential parking spaces shall be designated so as to provide continuous visual separation of at least five (5) feet in width between parking and adjoining residential property, where applicable, by means of landscaping, fencing or ground cover. In addition, all areas between building setbacks and public street frontage shall be restricted to fifty (50) percent development for parking area.
 - b. All areas on-site which comprise the off-street parking plan shall be visually defined by paved or graveled surfaces which shall be duly maintained.
 - c. Nonresidential parking spaces, where applicable, shall comply with subsection (3) above.
- (8) For all uses other than single-family and duplex, on-site parking shall not depend on the public right-of-way, other than alleys or transient easements, in order to maneuver into or out of parking spaces, and the moving of any vehicle on site in order to maneuver another vehicle on site shall not meet the intent of this section, except quadraplexes and townhouses which have an attached two-car garage and an adjacent driveway. Said garage and driveway shall constitute three (3) parking spaces, regardless of whether it is necessary to move a vehicle parked in the driveway in order to maneuver any other vehicle parked in the garage or otherwise. This restrictive covenant of any such quadraplex or townhouse shall

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prohibit the conversion of the garage to either living or storage space.

- (9) All means of ingress and egress for parking on lots fronting on more than one public street shall be located at least twenty-five (25) feet from the intersection of property lines (right-of-ways) of such streets.
- (10) Dwelling: One parking space for each new detached single-family dwelling; two (2) parking spaces for each duplex unit. For town houses and other multifamily dwellings, one and one-half (1 1/2) spaces for each dwelling unit with one bedroom, two and one-half (2 1/2) parking spaces for each dwelling unit with two (2) or three (3) bedrooms, plus one additional parking space for each bedroom when a unit has over three (3) bedrooms.
- (11) Boarding, rooming, fraternity or sorority houses: One parking space per bed occupancy as approved by an occupancy permit. Parking spaces shall not be located between the front building facade and property lines fronting public streets.
- (12) Hotels, motels and similar transient housing: One parking space for each sleeping room or suite plus one parking space for each four-seat capacity of dining and/or assembly spaces. In addition, one parking space per employee. Also refer to subsection (3) above.
- (13) Hospitals, similar care facilities (other than nursing homes): Two (2) parking spaces for each four (4) beds of the maximum capacity plus one parking space for each attending physician. In addition, one parking space per employee. Also refer to subsection (3) above.
- (14) Churches, funeral homes, auditoriums, theaters and similar uses of public assembly (excepting schools): One parking space for each ten (10) fixed seats in the assembly use of the largest capacity (10%), or two (2) spaces for each ten (10) portable seats in the assembly use for the largest capacity (20%). When assembly uses may borrow parking from other public or private parking facilities in close proximity, the planning commission, upon comprehensive site plan review, may modify these requirements. Also refer to subsection (3) above.
- (15) Elementary schools, junior or senior high schools, or equivalent facilities: Proposed off-street parking spaces shall be programmed by the applicable school authorities as necessary to meet state standards for use and consideration of site locations, then submitted to the planning commission for comprehensive site plan review. Also refer to subsection (3) above.
- (16) Private clubs and recreational facilities, civic and religious organizations not considered public assembly: One parking space for every ten (10) members (10%); on the same ratio of parking to persons permitted to use the facilities. Also refer to subsection (3) above.
- (17) Community centers, libraries, museums and similar facilities not dependent on public assembly or seating: One (1) parking space for each two hundred and fifty (250) square feet of gross floor area. Also refer to subsection (3) above.
- (18) Restaurants, cafes, taverns or similar eating and/or drinking facilities: One (1) parking space for each one hundred (100) square feet of gross floor area. Also refer to subsection (3) above.
- (19) Business or professional offices, veterinarian, medical or dental clinics, banks and similar establishments: A minimum of three (3) spaces or one (1) space for each three hundred (300) square feet of gross floor area or fraction thereof, whichever is greater. Refer to subsection (3) above.
- (20) Retail stores, sales rooms and similar mercantile establishments: If ten thousand (10,000) square feet or less of gross floor area, one parking space for each two hundred (200) square feet of gross floor area; if over ten thousand (10,000) square feet of gross floor area, one (1) parking space for each two hundred and fifty (250) square feet of gross floor area. Refer to subsection (3) above.
- (21) Manufacturing and industrial plants, research or wholesale stores, testing laboratories, assembly plants, warehouses or similar facilities: One parking space for each two (2) persons working on the premises on a maximum working shift, plus parking space for every truck or other vehicle used in connection therewith. Modifications to landscaping requirements may be approved by the zoning administrator or the planning commission upon review of site plans.
- (22) Dwelling, multifamily or institutional where at least ninety (90) percent of the units are to be occupied by persons sixty (60) years or more of age (other than nursing homes or hospitals): One (1) parking space for each independent living unit plus sufficient parking spaces for employees. For assisted living units, one (1) parking space for every two (2) living units plus one parking space for each employee.
- (23) Institutional residential facilities (other than those with ninety (90) percent occupancy by persons sixty (60) years or more of age or fraternities or sororities): One space for every three (3) beds of the maximum occupancy plus one (1) parking space for each employee.
- (24) College or university academic building: one (1) space for every four (4) classroom seats based on

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maximum capacity plus one (1) space per employee.

(25) Nursing homes: One (1) parking space per every four (4) beds of the maximum capacity plus one (1) parking space for each employee.

(26) For all residential uses, other than single-family residential structures, all off-street parking spaces and drives shall be constructed of an all-weather stabilized, dust free surface which is clearly defined from adjoining on-site improvements. Should the parking lot surface not be installed during other phases of on-site development, then installation of the parking or driveway surface shall be assured through the posting of a performance bond with surety, cash escrow, irrevocable letter of credit or combination thereof.

(27) Auto repair and service establishment: Two (2) parking spaces per service bay plus one (1) space for every two hundred (200) square feet of retail floor area; service bay is not a parking space. Also refer to subsection (3) above.

(28) Animal kennel/groomer: One (1) space for every employee on the maximum shift, plus one (1) space for each vehicle operated by the business, plus one (1) space for every five hundred (500) square feet of internal gross floor area.

(Ord. of 4-23-96; Ord. of 3-25-97; Ord. of 6-22-99; Ord. of 9-21-99; Ord. of 8-23-05)

Sec. 10-3-26. Location in relation to building or use served.

(a) All parking spaces required herein shall be located on the same lot with the building or use served or adjoining lots within a zoning district permitting the same. A common or cooperative location, which provides parking for two (2) or more uses, shall be in the ownership of all of the participating property owners, or shall have permanent easement and maintenance agreements between the participating property owners of a period of at least ten (10) years following the date of city approval, and shall have combined parking space equal to the sum required by Sec. 10-3-26 (b), for the separate uses, except that the amount of space may be further reduced by the planning commission for reason of subject to its determination that fewer spaces are needed due to different hours of activity among the various uses, and shall be subject to such arrangements as will a guarantee of the permanent availability of such space, or other such factors. When assembly uses propose borrowing parking from other public or private parking facilities which are properly zoned and in reasonable proximity, the planning commission, upon site plan review, may modify the number of on-site parking spaces.

(b) For uses located on contiguous but separate lots, the number of required parking spaces may be reduced in accordance with the following provisions:

1. The uses are contiguous uses.
2. Parking areas of the respective uses are connected by safe and convenient pedestrian access, as well as by automobile access.
3. A shared parking agreement is submitted and approved by the zoning administrator. The agreement will be binding on the current and future property owners as long as the permitted uses remain substantially the same.
4. Reductions in required parking may be approved by the zoning administrator, at the request of the applicant, in accordance with the following calculation provided by the applicant:
 - a. The total number of parking spaces required for each land use is determined in accordance with Sec. 10-3-25.
 - b. Using the table below, determine the number of spaces needed by each use for each of the four time periods by multiplying the parking required for each use by the corresponding percentage of use for that time period.
 - c. Calculate the total number of spaces needed for all uses for each time period.

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d. The time period with the highest number of parking spaces required for the sum of all uses shall be the number of parking spaces required.

| Shared Parking Calculations for Contiguous Uses | | | | |
|---|------------------------|--------------------------|------------------------|--------------------------|
| Use | Weekday | | Weekend | |
| | Daytime (8 AM- 6PM) | Evening (6PM – 11 PM) | Daytime (8 AM- 6PM) | Evening (6PM – 11 PM) |
| - | | | | |
| Office/ | 100% | 10% | 10% | 5% |
| Industrial | 100% | 100% | 100% | 100% |
| Retail/Personal Services | 60% | 90% | 100% | 70% |
| Hotel | 75% | 100% | 75% | 100% |
| Multi-family Residential | 50% | 75% | 100% | 80% |
| Restaurant | 75% | 100% | 100% | 100% |
| Entertainment/ Recreational | 40% | 100% | 80% | 100% |
| All other uses | 100% | 100% | 100% | 100% |

(Ord. of 4-23-96; Ord. of 9-21-99)

Sec. 10-3-27. Combining or assigning spaces for separate uses.

The required space for any number of separate uses may be combined in one (1) lot. At the time of site plan review when the total occupancy cannot be determined by use, the primary use or intent will be the basis for determining off-street parking requirement.

(Ord. of 4-23-96)

Sec. 10-3-28. Rules for computing required number of spaces.

In computing the number of parking spaces required, the following rules shall govern:

- (1) Where fractional floor space results, the parking spaces required shall be construed to the next whole number.
 - (2) Whenever a building or use is changed or enlarged in floor area, or otherwise affects the necessary number of parking spaces, such spaces shall be provided on the basis of the enlargement or change in accordance with this section.
 - (3) Computations of parking space requirements on an employee basis shall be based on maximum number of employees on duty. Computations of parking space requirements on a person basis shall be based on the occupancy load of the building.
- (Ord. of 4-23-96)

Sec. 10-3-29. Other requirements.

- (a) All off-street parking spaces for handicapped persons shall conform with the most recent American

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Disabilities Act regulations.

(b) All off-street parking spaces, loading areas, driveways, travelways, parking bays and entrances shall comply with the city design and construction standards manual.
(Ord. of 4-23-96)

Sec. 10-3-30. Off-street loading and unloading space.

Every building or structure used for business, trade or industry shall provide appropriate space for the loading and unloading of vehicles on private property and not depend on public streets for the maneuvering of such vehicles. Dependence on alleys or easements for loading/unloading and maneuvering may be permitted; provided, that such use does not obstruct the passage of other vehicles. Such space shall have access to a public alley, or if there is no alley, to a public street.
(Ord. of 4-23-96)

ARTICLE H. R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

Sec. 10-3-31. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "R-1" single-family residential district.
(Ord. of 4-23-96)

Sec. 10-3-32. Purpose of district.

This district is intended for low-density, relatively spacious single-family residential development and for areas where such development is likely to occur in the future, together with certain governmental, educational, religious, recreational and utility uses, subject to restrictions and requirements necessary to ensure compatibility with residential surroundings.
(Ord. of 4-23-96)

Sec. 10-3-33. Uses permitted by right.

[The following uses are permitted by right:]

- (1) Owner-occupied single-family dwellings, which may include rental of space for occupancy by not more than two (2) persons, providing such rental space does not include new kitchen facilities.
- (2) Nonowner-occupied single-family dwellings, which may include rental of space for occupancy by not more than one (1) person, providing such rental space does not include new kitchen facilities.
- (3) Home occupations, as defined.
- (4) Churches or other places of worship; provided, that any building shall be located at least fifty (50) feet from any adjoining property line, including right-of-way lines.
- (5) Public schools or a private school having a function substantially the same as a public school; provided, that any building shall be located at least fifty (50) feet from any adjoining property line, including right-of-way lines.
- (6) Other governmental uses, such as community centers, parks and playgrounds; provided, that any new building shall be located at least fifty (50) feet from any adjoining property line, including right-of-way lines.
- (7) Accessory buildings and uses clearly incidental to the above. (Refer to section 10-3-114, Accessory Buildings.)
- (8) Public uses.
(Ord. of 4-23-96)

Sec. 10-3-34. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Child day care centers.
- (2) Adult day care centers.
- (3) Home for the aged in which three (3) persons not of the immediate family are provided with food,

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shelter and care for compensation.

- (4) Private clubs and golf courses.
- (5) Community buildings and facilities used for recreational, social, educational and cultural activities which are intended to benefit the residents of the subdivision.
- (6) Major family day home.
- (7) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one parking space for each guest room.
- (8) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
(Ord. of 4-23-96; Ord. of 1-12-99; Ord. of 7-26-05)

Sec. 10-3-35. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot area Sq. Ft. | * Lot Width | MINIMUM FEET | | | MAXIMUM | | |
|-----------------------|-------------------|--------------|---------------|--------------|--------------|---------|-------------|
| | | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Ht. Feet |
| Single-family: 10,000 | 80 | 100 | 30 | 10 | 25 | 3 | 35 |

*Measured at the point of required front setback line.

Other uses are same as for single-family dwellings unless otherwise specified in the district regulations.
(Ord. of 4-23-96; Ord. of 9-24-02; Ord. of 11-25-08(2))

Sec. 10-3-36. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all new buildings and uses permitted in this district are governed by article G.
(Ord. of 4-23-96)

ARTICLE I. R-2 RESIDENTIAL DISTRICT

Sec. 10-3-37. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "R-2" Residential District.
(Ord. of 4-23-96)

Sec. 10-3-38. Purpose of district.

This district is intended for medium-density, single-family and duplex residential development and for areas where such development is likely to occur in the future, together with certain governmental, educational, religious, recreational and utility uses subject to restrictions and requirements necessary to ensure compatibility with residential surroundings.
(Ord. of 4-23-96; Ord. of 3-24-09(1))

Sec. 10-3-39. Uses permitted by right.

The following uses are permitted by right:

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- (1) Any use permitted by right in the R-1 single-family residential district.
 - (2) Duplex dwelling units with limitations as required by area and dimensional regulations (section 10-3-41 below).
 - (3) Accessory buildings and uses clearly incidental to the above. (Refer to section 10-3-114, Accessory Buildings.)
 - (4) Public uses.
- (Ord. of 4-23-96; Ord. of 10-28-97; Ord. of 12-15-98; Ord. of 2-22-2000; Ord. of 2-24-09(2))

Sec. 10-3-40. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Child day care centers.
 - (2) Adult day care centers.
 - (3) Cemeteries. (Please note that this is currently a use permitted by right.)
 - (4) Private clubs and golf courses.
 - (5) Community buildings and facilities used for recreational, social educational and cultural activities which are intended to benefit the residents of the subdivision.
 - (6) Major family day home.
 - (7) Occupancy, other than permitted by right, of not more than four (4) persons (except such occupancy may be superseded by building regulations), provided one (1) off-street parking space per tenant is provided on site.
 - (8) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one (1) parking space for each guest room.
 - (9) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
- (Ord. of 4-23-96; Ord. of 12-15-98; Ord. of 1-12-99; Ord. of 2-22-00; Ord. of 7-26-05)

Sec. 10-3-41. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot area Sq. Ft. | MINIMUM FEET | | | | MAXIMUM | | |
|---------------------------|--------------|--------------|---------------|--------------|--------------|---------|----------------|
| | Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Height Feet |
| Single-Family: 7,000 | 60 | 100 | 30 | 10 | 20 | 3 | 35 |
| Duplex: 5,500/ Unit | 30/ Unit | 100 | 30 | 10 | 25 | 3 | 35 |

*Measured at the point of required front setback line.

**See special regulations for attached duplex dwellings and townhouses in article T.

(Ord. of 4-23-96; Ord. of 9-11-01(2); Ord. of 11-25-08(2); Ord. of 2-24-09(2))

Sec. 10-3-42. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in all districts and shall not be permitted in front yards.

Exception: Private amateur radio antennas intended for public service and emergency use may exceed

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- the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all new buildings and uses permitted in this district are governed by article G.
 - (c) Only one (1) principal dwelling or duplex dwelling may be constructed upon each subdivided parcel of land unless such land is proposed for a group housing project as defined.
 - (d) Proposed group housing projects as permitted in this district, which rely on private refuse collection, shall provide a designated point of collection with appropriate facilities. Said facilities shall be screened as may be required upon approval of the site plan.
- (Ord. of 4-23-96; Ord. of 3-24-09(1); Ord. of 11-25-08(3))

ARTICLE J. R-3 MULTIPLE DWELLING RESIDENTIAL DISTRICT

This article is applicable to multifamily buildings constructed by or with Comprehensive Site Plans approved before August 14, 2010. Effective this date, all other construction must comply with the provisions of article J.2.

(Ord. of 8-14-07)

Sec. 10-3-43. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "R-3" Multiple Dwelling Residential District.

(Ord. of 4-23-96; Ord. of 8-14-07)

Sec. 10-3-44. Purpose of district.

This district is intended for medium- to high-density residential development and other uses intended to respect the residential character which are aesthetically compatible within the district by means of architectural expression, landscaping and restrained traffic flow. Residential development includes single-family, duplex, multiple dwelling and townhouse units. Nonresidential development may include institutional buildings such as colleges, universities, hospitals, medical and professional offices, nursing homes and charitable institutions. It is further intended that conversion from residential use to other permitted nonresidential uses be compatible with the character of the district. All nonresidential uses are subject to restrictions and requirements necessary to ensure compatibility with residential surroundings.

(Ord. of 4-23-96; Ord. of 8-14-07)

Sec. 10-3-45. Uses permitted by right.

[The following uses are permitted by right:]

- (1) Any use permitted by right in the R-1 and R-2, residential districts.
- (2) Dwelling units may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.
- (3) Attached multiple-family buildings of not more than twelve (12) units per building and attached townhouses of not more than eight (8) units.
- (4) College and university buildings and functions, which are either owned or leased by such institutions, and which may include fraternities and sororities.
- (5) Hospitals, convalescent or nursing homes, funeral homes, medical offices and professional offices as defined by article F.
- (6) Charitable or benevolent institutions.
- (7) Accessory buildings and uses clearly incidental to the above, accessory uses incidental to permitted nonresidential uses shall be located within principal buildings when such accessory functions serves the public. Parking garages are permitted within the district.
- (8) Child day care.
- (9) Adult day care.
- (10) Private clubs and golf courses.
- (11) Cemeteries.
- (12) Public uses.

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(Ord. of 4-23-96; Ord. of 2-22-00; Ord. of 8-14-07)

Sec. 10-3-46. Uses permitted only by special use permit.

The following uses are permitted by special use permit only:

- (1) Boarding and rooming houses, complying with conditions as defined under article F, and limited in occupancy by one (1) person per designated bedroom unless otherwise specified within the special use permit.
 - (2) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one parking space for each guest room.
 - (3) Reducing required parking areas to permit fewer than the required number of parking spaces for professional offices permitted in residential districts, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that, at the discretion of the city council, it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.
 - (4) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
 - (5) Personal service establishments, including, but not limited to barber shops, day spas, beauty parlors, and tanning salons. Parking requirements based on retail use designation.
 - (6) Major family day home.
- (Ord. of 4-23-96; Ord. of 10-28-97; Ord. of 1-12-99; Ord. of 4-24-01(1); Ord. of 7-26-05; Ord. of 8-23-05; Ord. of 8-14-07; Ord. of 4-28-09(5); Ord. of 5-26-09(2))

Sec. 10-3-47. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot area Sq. Ft. | MINIMUM FEET | | | | | | MAXIMUM | |
|---|---|--------------|---------------|--------------------|--------------|---------|----------------|--|
| | * Lot Width | Lot Depth | Front Yard | ** Side Yard | Rear Yard | Stories | Height Feet | |
| Single-Family: 6,000 | 60 | 100 | 30 | 10 | 20 | 3 | 35 | |
| Duplex: 4,000/unit | 30/Unit | 100 | 30 | 10 | 25 | 3 | 35 | |
| Multi-Family: 3,000/unit | 60 | 100 | 30 | 10 | 25 | 3 | 40 | |
| Multi-Family Quadraplex: 12,000/building, 3,000 sq.ft./unit | 60 ft./4unit building, 30ft./individually subdivided lot | 100 | 30 | 10 | 25 | 3 | 40 | |
| Townhouse: 2,000/unit | 18 | 112 | 30 | 10 | 25 | 3 | 40 | |
| Other uses: 6,000 | 60 | 100 | 30 | 10 | 25 | 3 | 40 | |

• Measured at point of required front setback line.

** See special regulations for attached multifamily dwellings and townhouses in article T.
(Ord. of 6-9-98; Ord. of 5-22-01; Ord. of 9-11-01(2); Ord. of 8-14-07; Ord. of 11-25-08(2); Ord. of 2-24-09(2))

Sec. 10-3-48. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height permitted in this district and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all new buildings and uses permitted in this district are governed by

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article G.

- (c) More than one principal building may be constructed upon an unsubdivided parcel of land as density allows. The open space between each building as measured at the closest point between building walls shall not be less than thirty (30) feet. The minimum separation between buildings may be superseded by building regulations. The front facade of each principal building shall face a dedicated public street or the limits of a private parking unit (as defined) and no building shall have the rear facade facing a dedicated public street.
- (d) Proposed building projects as permitted in this district, which rely on private refuse collection, shall provide a designated point of collection with appropriate facilities. Said facilities shall not be located in any yard adjoining a public street and shall be screened as may be required upon approval of the site plan.
(Ord. of 4-23-96; Ord. of 8-14-07)

ARTICLE J.2. R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT

This article will be effective August 14, 2010. To develop under the previous R-3, Multiple Dwelling Residential District, Comprehensive Site Plans must be approved before August 14, 2010.
(Ord. of 8-14-07)

Sec. 10-3-48.1. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "R-3" Medium Density Residential District.
(Ord. of 8-14-07)

Sec. 10-3-48.2. Purpose of district.

This district is intended for medium density residential development and other uses intended to respect the residential character which are aesthetically compatible within the district by means of architectural expression, landscaping and restrained traffic flow. Residential development includes single-family, duplex, townhouse units, and in special circumstances, multiple-family buildings. Nonresidential development may include institutional buildings such as colleges, universities, hospitals, medical and professional offices, nursing homes and charitable institutions. It is further intended that conversion from residential use to other permitted nonresidential uses be compatible with the character of the district. All nonresidential uses are subject to restrictions and requirements necessary to ensure compatibility with residential surroundings.
(Ord. of 8-14-07)

Sec. 10-3-48.3. Uses permitted by right.

The following uses are permitted by right:

- (1) Single-family dwelling units with limitations as required by area and dimensional regulations (section 10-3-48.5 below).
- (2) Duplex dwelling units with limitations as required by area and dimensional regulations (section 10-3-48.5 below).
- (3) Dwelling units may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.
- (4) Attached townhouses of not more than eight (8) units.
- (5) Home occupations, as defined.
- (6) Churches or other places of worship.
- (7) Public schools or a private school having a function substantially the same as a public school.
- (8) Other governmental uses, such as community centers, parks and playgrounds.
- (9) College and university buildings and functions, which are either owned or leased by such institutions, and which may include fraternities and sororities.
- (10) Hospitals, convalescent or nursing homes, funeral homes, medical offices and professional offices as defined by article T.
- (11) Charitable or benevolent institutions.
- (12) Accessory buildings and uses clearly incidental to the above. Accessory uses incidental to

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permitted nonresidential uses shall be located within principal buildings when such accessory function serves the public. Parking garages are permitted within the district.

- (13) Child day care.
 - (14) Adult day care.
 - (15) Private clubs and golf courses.
 - (16) Cemeteries.
 - (17) Public uses.
- (Ord. of 8-14-07; Ord. of 11-25-08(2); Ord. of 2-24-09(2))

Sec. 10-3-48.4. Uses permitted only by special use permit.

The following uses are permitted by special use permit only:

- (1) Boarding and rooming houses, complying with conditions as defined under article F, and limited in occupancy by one (1) person per designated bedroom unless otherwise specified within the special use permit.
 - (2) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one parking space for each guest room.
 - (3) Reducing required parking areas to permit fewer than the required number of parking spaces for professional offices permitted in residential districts, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that, at the discretion of the city council, it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.
 - (4) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
 - (5) Personal service establishments, including, but not limited to barber shops, day spas, beauty parlors, and tanning salons. Parking requirements based on retail use designation.
 - (6) Multiple-family dwellings of up to twelve (12) units per building under conditions set forth in subsection 10-3-48.6(e) and such other conditions deemed necessary by city council.
 - (7) Major family day home.
- (Ord. of 8-14-07; Ord. of 11-25-08(2); Ord. of 4-28-09(5); Ord. of 5-26-09(2))

Sec. 10-3-48.5. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot area Sq. Ft. | MINIMUM FEET | | | | | MAXIMUM | |
|--|--|--------------|---------------|--------------------|--------------|---------|----------------|
| | * Lot Width | Lot Depth | Front Yard | ** Side Yard | Rear Yard | Stories | Height Feet |
| Single-family: 6,000 | 60 | 100 | 30 | 10 | 20 | 3 | 35 |
| Duplex: 4,000/unit | 30/unit | 100 | 30 | 10 | 25 | 3 | 35 |
| Multi-Family: 3,000/unit | 60 | 100 | 30 | 10 | 25 | 3 | 40 |
| Multi-Family Quadrplex: 12,000/building, 3,000 sq.ft./unit | 60 ft./4 unit building, 30 ft./individually subdivided lot | 100 | 30 | 10 | 25 | 3 | 40 |
| Townhouse: 2,000/unit | 18 | 112 | 30 | 10 | 25 | 3 | 40 |
| Other uses: | 60 | 100 | 30 | 10 | 25 | 3 | 40 |

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6,000

*Measured at point of required front setback line.

**See special regulations for attached multifamily dwellings and townhouses in article T.
(Ord. of 8-14-07; Ord. of 11-25-08(2); Ord. of 2-24-09(2))

Sec. 10-3-48.6. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all buildings and uses permitted in this district are governed by article G. When an off-street parking lot/garage containing five (5) or more spaces is to be constructed within an established single-family detached or duplex neighborhood, such parking lots/garages shall be located to the rear or side of buildings and screened from the street by the building or by landscaping or walls. Where such parking lots/garages abut single-family detached or duplex lots, they shall be screened from such lots by landscaping, fences, or walls. An adequate screen shall be a minimum five-foot wide buffer area containing the following:

TABLE INSET:

| Screen Abutting Street | Screen Abutting Adjacent Lot |
|---|---|
| 4-foot high masonry wall | 6-foot high masonry wall or solid wood fence |
| Or | Or |
| Evergreen hedge of 4-foot high (ultimate height) shrubs or trees planted a minimum of 5 feet on center so as to form a dense screen | Evergreen hedge of 6-foot high (ultimate height) shrubs or trees planted a minimum of 5 feet on center so as to form a dense screen |

An established single-family detached or duplex neighborhood is defined as one (1) meeting at least one (1) of the following conditions:

- (1) A single-family house or duplex is located on at least one (1) side, not rear, of the lot containing the parking lot/garage, or
- (2) At least fifty (50) percent of the lots along both sides of the street within the same block as the parking lot/garage are occupied by single-family houses or duplexes.
- (c) More than one (1) principal building may be constructed upon an unsubdivided parcel of land as density allows. The open space between each building as measured at the closest point between building walls shall not be less than thirty (30) feet. The minimum separation between buildings may be superseded by building regulations. The front facade of each principal building shall face a dedicated public street or the limits of a private parking unit (as defined) and no building shall have the rear facade facing a dedicated public street.
- (d) Proposed building projects as permitted in this district, which rely on private refuse collection, shall provide a designated point of collection with appropriate facilities. Said facilities shall not be located in any yard adjoining a public street and shall be screened as may be required upon approval of the site plan.
- (e) Multiple-family development special use permits may be approved if the following conditions as determined by city council are met:
 - (1) Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide in the Comprehensive Plan, is located adjacent to, across the street from, or in close proximity to the proposed multiple-family development.
 - (2) The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities:
 - Currently serve the site; or
 - Are planned to serve the site according to a city or state plan with reasonable expectation of construction within the timeframe of the need created by the development; or

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- Will be provided by the applicant at the time of development; or
 - Are not needed because of the circumstances of the proposal.
- (3) The applicant has demonstrated that the proposed multiple-family development's design is compatible with adjacent existing and planned single-family, duplex and townhouse development. Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent single-family, duplex and townhouse development and public streets are not dominated by large buildings, mechanical/electrical and utility equipment, service/refuse functions and parking lots or garages.
- (4) The applicant has shown that the site is environmentally suitable for multiple-family development. There shall be adequate area within the site, or the development shall be designed, to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.
- (f) Any conforming uses established under the R-3 regulations that existed prior to August 14, 2010, shall not be considered nonconforming and may continue to meet those prior R-3 regulations. Legally established multiple-family residential developments meeting the prior R-3 regulations shall not be required to obtain a special use permit.
(Ord. of 8-14-07)

ARTICLE K. R-4 PLANNED UNIT RESIDENTIAL DISTRICT

Sec. 10-3-49. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "R-4" Planned Unit Residential District Regulations.
(Ord. of 4-23-96)

Sec. 10-3-50. Purpose of district.

This district is intended to permit the development of planned residential neighborhoods containing not less than twenty-five (25) contiguous acres under one (1) ownership or control at the time of approval for development. The minimum acreage requirement may be waived subject to rezoning of adjoining parcels to an existing R-4 district. Within the district the location of all buildings, playgrounds, recreation and green areas, parking areas and open spaces shall be developed in such a manner as to promote a variety of residential and permitted nonresidential buildings in orderly relationship to one another. Designated open green space other than required parking areas shall be at least fifteen (15) percent of any plan of development. Open space requirements are intended to provide amenities which enhance the total plan of development and should be in close proximity to the principal elements of the district.
(Ord. of 4-23-96)

Sec. 10-3-51. Uses permitted by right.

[The following uses are permitted by use:]

- (1) Any use permitted by right in the R-1 and R-2 residential districts.
- (2) Dwelling units may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.
- (3) Attached multiple-family buildings of not more than twelve (12) units and attached townhouses of not more than eight (8) units.
- (4) Nonresidential uses which are designed for the convenience of the adjoining residential areas, such as small shops, stores and offices which are concentrated within an area not to exceed ten (10) percent of the plan of development, and in which no singular commercial use exceeds two thousand (2,000) square feet of gross leasable area. Nonresidential uses which customarily depend on drive-in facilities are not permitted.
- (5) Uses in an R-4 District shall be permissible only in the location shown on the approved plan of development.
- (6) Accessory buildings and uses clearly incidental to the above.
- (7) Child day care centers.
- (8) Adult day care centers.

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- (9) Public uses.
(Ord. of 4-23-96; Ord. of 2-22-00)

Sec. 10-3-52. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Private clubs and golf courses.
- (2) Community building and facilities intended to benefit the residents of the subdivision (other than those permitted by right as an accessory to a multifamily development).
- (3) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
- (4) Major family day home
(Ord. of 4-23-96; Ord. of 7-26-05; Ord. of 4-28-09(5))

Sec. 10-3-53. Area and dimensional regulations.

| Lot area Sq. Ft. | MINIMUM FEET | | | | MAXIMUM | | |
|----------------------------|--------------|--------------|---------------|--------------|--------------|---------|----------------|
| | Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Height Feet |
| Single- Family: 6,000 | 80 | 100 | 30 | 10 | 20 | 3 | 35 |
| Duplex: 3,000/Unit | 60 | 100 | 30 | 10 | 25 | 3 | 35 |
| Multi- Family: 3,000/ Unit | 60 | 100 | 30 | 10 | 25 | 3 | 40 |
| Town- house: 2,000/Unit | 18 | 112 | 30 | 10 | 25 | 3 | 40 |

*Measured at the point of required front setback line.

**See special regulations for attached duplex dwellings, multifamily dwellings and townhouses in article T.

(Ord. of 4-23-96; Ord. of 9-11-01(2); Ord. of 11-25-08(2); Ord. of 2-24-09(2))

Sec. 10-3-54. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in all districts and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all new buildings and uses permitted in this district are governed by article G.
- (c) More than one principal building may be constructed upon an unsubdivided parcel of land as density allows. The open spaces between each building as measured at the closest point between building walls shall not be less than thirty (30) feet. The minimum separation between buildings may be superseded by building regulations. The front facade of each principal building shall face a dedicated public street or the limits of a private parking unit (as defined) and no building shall have the rear facade along a dedicated public street.
- (d) Proposed building projects as permitted in this district, which rely on private refuse collection, shall provide a designated point of collection with appropriate facilities. Such facilities shall not be located in any yard adjoining a public street and shall be screened as may be required upon approval of the site plan.
(Ord. of 4-23-96)

Sec. 10-3-55. Reserved.

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ARTICLE K.2. R-5 HIGH DENSITY RESIDENTIAL DISTRICT

Sec. 10-3-55.1. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "R-5" High Density-Residential District.
(Ord. of 4-24-07)

Sec. 10-3-55.2. Purpose of district.

This district is intended for medium to high density residential development, including townhouses and multiple-family dwelling units, together with certain governmental, educational, religious, recreational and utility uses. Vehicular, pedestrian and bicycle transportation is facilitated through a connected system of roads, sidewalks and shared use paths, so as to provide many choices with regard to mode and route, and to provide a safe and comfortable pedestrian environment that promotes walkability for residents and visitors.
(Ord. of 4-24-07)

Sec. 10-3-55.3. Uses permitted by right.

The following uses are permitted by right:

- (1) Townhouses of not more than eight (8) units per building.
 - (2) Multiple-family dwellings of not more than twelve (12) units per building.
 - (3) Dwelling units may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.
 - (4) Community buildings for associated townhouse and multiple-family residential developments.
 - (5) Public and private schools.
 - (6) Child day care.
 - (7) Adult day care.
 - (8) Churches.
 - (9) Parks.
 - (10) Public uses.
 - (11) Accessory buildings and uses clearly incidental to the above. Accessory uses incidental to permitted nonresidential uses shall be located within principal buildings when such accessory function serves the public. Parking garages are permitted within the district.
 - (12) Home occupations.
- (Ord. of 4-24-07; Ord. of 3-24-09(2))

Sec. 10-3-55.4. Uses permitted by special use permit.

The following uses are permitted by special use permit only:

- (1) Multiple-family dwellings of more than twelve (12) units per building under conditions set forth in subsection 10-3-55.6 (e) and such other conditions deemed necessary by city council.
 - (2) Multiple-family buildings greater than four stories and/or fifty-two (52) feet in height under conditions set forth in subsection 10-3-55.6 (e) and such other conditions deemed necessary by city council.
 - (3) Private clubs and golf courses.
 - (4) Retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive-through facilities) under conditions set forth in subsection 10-3-55.6 (f) and (g) and such other conditions deemed necessary by city council.
- (Ord. of 4-24-07)

Sec. 10-3-55.5. Area and dimensional regulations.

MINIMUM FEET

MAXIMUM

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| Lot area Sq. Ft. | *Lot Width | Lot Depth | Front Yard | **Side Yard | Rear Yard | ***Stories | ***Height Ft |
|---|---|--------------|------------------|----------------|--------------|------------|-----------------|
| Multi-Family: 1,800/unit | 60 | 100 | 30 10 | 10 | 25 | 4 | 52 |
| Multi-Family Quadrplex: 12,000/building, 3,000 sq.ft./unit | 60 ft./4 unit building, 30 ft./individually subdivided lot | 100 | 30 10 | 10 | 25 | 3 | 40 |
| Townhouse: 2,000/unit | 18 | 112 | 30 10 | 10 | 25 | 3 | 40 |
| Other uses: 6,000 | 60 | 100 | 30 10 | 10 | 25 | 3 | 40 |

*Measured at the point of required front setback line.

**See special regulations for attached multifamily dwellings and townhouses in article T.

***The maximum number of stories and/or height of multifamily buildings may be increased by special use permits as set forth in subsection 10-3-55.4(2).
(Ord. of 4-24-07; Ord. of 11-25-08(2))

Sec. 10-3-55.6. Other regulations.

(a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards.

Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.

(b) Off-street parking regulations for all buildings and uses permitted in this district are governed by article G.

(c) More than one (1) principal building may be constructed upon an unsubdivided parcel of land as density allows. The open space between each building as measured at the closest point between building walls shall not be less than thirty (30) ~~ten (10)~~ feet. The minimum separation between buildings may be superseded by building regulations. The front facade of each principal building shall face a dedicated public street or the limits of a private parking unit (as defined) and no building shall have the rear facade facing a dedicated public street.

(d) Proposed building projects as permitted in this district, which rely on private refuse collection, shall provide a designated point of collection with appropriate facilities. Said facilities shall not be located in any yard adjoining a public street and shall be screened as may be required upon approval of the site plan.

(e) Multiple-family development special use permits may be approved if the following conditions as determined by city council are met:

- (1) Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide in the Comprehensive Plan, is located adjacent to, across the street from, or in close proximity to the proposed multiple-family development.
- (2) The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities:

- Currently serve the site; or
- Are planned to serve the site according to a city or state plan with reasonable expectation of construction within the timeframe of the need created by the development; or
- Will be provided by the applicant at the time of development; or
- Are not needed because of the circumstances of the proposal.

(3) The applicant has demonstrated that the proposed multiple-family development's design is compatible with adjacent existing and planned single-family, duplex and townhouse development. Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent single-family, duplex and townhouse development and

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public streets are not dominated by large buildings, mechanical/electrical and utility equipment, service/refuse functions and parking lots or garages.

(4) The applicant has shown that the site is environmentally suitable for multiple-family development. There shall be adequate area within the site, or the development shall be designed, to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.

(f) Uses listed in subsection 10-3-55.4(4) shall be integrated into the residential community so as to not adversely affect local traffic patterns and levels and views from surrounding residential areas and public streets. Such integration shall be achieved through effective site planning, compatible architectural design, and landscaping and screening of parking lots, utilities, mechanical/electrical/telecommunications equipment and service/refuse functions. Buildings shall be residential in design and scale with floorplates not exceeding seven thousand five hundred (7,500) square feet.

(g) Mixed use buildings comprised of nonresidential uses listed under subsection 10-3-55.4(4) and multiple-family dwellings are permitted by special use permit. An area of the building up to the entire first floor may be devoted to nonresidential uses, whatever the size of the building floorplate. The multiple-family dwelling units within mixed use buildings shall be included in the total number of dwelling units in the development and therefore in the calculation of the density for the development. The maximum total number of stories and maximum height of mixed use buildings shall be the same as for buildings comprised entirely of multiple-family dwellings. The standards of subsection (f) shall apply to mixed use buildings, except for the limitations on maximum floorplate.

(Ord. of 4-24-07)

ARTICLE L. R-6 LOW DENSITY MIXED RESIDENTIAL PLANNED COMMUNITY DISTRICT REGULATIONS

Sec. 10-3-56.1. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "R-6" Low Density Mixed Residential Planned Community District Regulations.

(Ord. of 10-25-05, § 1)

Sec. 10-3-56.2. Purpose of the district.

This district is intended to provide opportunities for the development of planned residential communities offering a mix of large and small-lot single-family detached dwellings and open spaces, together with certain governmental, educational, religious, recreational and support uses. Innovative residential building types and creative subdivision design solutions are encouraged to promote neighborhood cohesiveness, walkability, connected transportation systems, community green spaces and protection of environmental resources. Communities shall be developed and redeveloped in accordance with a master development plan adopted at the time of rezoning or a subsequent approved amendment thereof. In order to carry out the intent of this article, planned communities developed under these district regulations and the approved master development plan shall achieve the following design objectives:

(1) A mix of single-family detached residential lot sizes and configurations is provided so as to offer a variety of housing opportunities, yet create a cohesive neighborhood that enhances social interaction.

(2) Housing is clustered to preserve valuable environmental resources and provide usable recreational open space.

(3) The open space system is as carefully designed as the housing area so as to offer usable parks, connected green spaces, and village greens and civic spaces visible from roadways and spatially defined by abutting building facades and/or landscape elements.

(4) Vehicular, pedestrian and bicycle transportation is facilitated through a connected system of roads, sidewalks and/or trails so as to provide many choices with regard to mode and route.

(5) Traffic calming techniques may be used to reduce vehicle speed and increase pedestrian and bicycle safety.

(6) Principal buildings address the street, presenting front facades on the publicly visible side of the building.

(7) The visual impact of vehicular off-street parking and garages on public streetscape views is

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minimized through innovative site planning and building design, including parking areas located to the rear of buildings, using architectural design elements such as massing, form, materials and fenestration to make garages visually compatible with inhabited buildings, and parking areas screened with landscape elements.

(8) Neighborhood support uses, such as neighborhood commercial areas, daycare facilities, community centers, churches and schools, are designed so as to be visually compatible with the residential character of the neighborhood and accessible by all transportation modes.

(Ord. of 10-25-05, § 1)

Sec. 10-3-56.3. Uses permitted by right.

(a) Single-family detached dwellings.

(b) Home occupations.

(c) Community buildings.

(d) Public and private schools.

(e) Child day care centers.

(f) Adult day care centers.

(g) Retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities, unless permitted by special use permit), food and drug stores.

(h) Governmental, business and professional offices and financial institutions.

(i) Churches.

(j) Parks.

(k) Common open space.

(l) Public uses.

(m) Accessory buildings and uses customarily incidental to any of the above-listed uses.

(n) Dwelling units may be occupied by a single family or not more than two (2) persons, except that such occupancy may be superseded by building regulations.

(Ord. of 10-25-05, § 1; Ord. of 2-24-09(3))

Sec. 10-3-56.4. Uses permitted only by special use permit.

(a) Private clubs and golf courses.

(b) Home for the aged in which three not more than three (3) persons not of the immediate family are provided with food, shelter and care for compensation.

(c) Major family day home.

(d) Bed and breakfast facilities in which (1) food service shall be limited to breakfast and light fare for room guests only and (2) having space available on premises for one (1) parking space per guest room.

(e) Drive-through facility.

(Ord. of 10-25-05, § 1)

Sec. 10-3-56.5. Area, density and dimensional regulations.

(a) Minimum district size: Two (2) contiguous acres.

(b) Maximum density: Six (6) dwelling units per acre.

(c) Maximum building height: Thirty-five (35) feet (three (3) stories).

(d) Minimum common open space or park: Fifteen (15) percent.

(e) Lot area, lot width, lot depth and yards for all uses: requirements as set by the approved master development plan.

(f) Unless otherwise specified within the master development plan, the provisions of article T shall apply to the R-6 zoning district.

(Ord. of 10-25-05, § 1; Ord. of 2-24-09(4))

Sec. 10-3-56.6. Other regulations.

(a) Attached or detached private radio and television antennas, including dish antennas, shall not

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exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards.

Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.

(b) Off-street parking regulations for all buildings and uses permitted in this district are governed by article G.

(c) At least two (2) types of single-family detached residential lot sizes/configurations shall be provided and no one lot size/configuration type may exceed a total of seventy (70) percent of all the residential units in the community.

(d) Land area within the planned community shown on the master development plan as dedicated to uses permitted under subsections 10-3-56.3(g) and (h) shall not exceed five (5) percent of the total land area of the planned community. The master development plan shall show how such retail, restaurant and office uses shall be integrated into the residential community so as to not adversely affect local traffic patterns and levels and views from surrounding residential areas and public streets. Such integration shall be achieved through effective site planning, compatible architectural design, and landscaping and screening of parking lots, utilities, mechanical/electrical/telecommunications equipment and service/refuse functions. Buildings shall be residential in design and scale with floorplates not exceeding seven thousand five hundred (7,500) square feet.

(e) Applicants for the R-6 zoning district shall submit at rezoning a master development plan, showing and describing in map and text form:

(1) General layout of roads, housing areas, open space, parks, pedestrian and bicycle trails.

(2) General location and number of community building, school, day care, church and public use sites proposed.

(3) Description of housing types/lot configurations to be used with lot areas, minimum widths and depths, minimum yards defined.

(4) Indication on the master development plan of the general location of housing types/lot configurations proposed.

(5) Environmentally sensitive areas: slopes exceeding fifteen (15) percent, streams and 100-year floodplains.

(6) Proposed active recreation areas and recreation facilities.

(7) Proposed general landscape plan (landscape areas, plant materials and general specifications).

(8) Description of how design principles of the district are to be met and proffers, if any, to implement the principles.

(f) Ownership and maintenance of common open space and other common facilities.

(1) General requirements:

a. *Organization:* A property owners' association shall be established to provide for the ownership, care and maintenance of all common open space areas and other common facilities and improvements.

b. *Ownership:* All common open space, facilities and improvements shall be dedicated to the property owners' association. No land within privately owned lots shall be considered common open space.

c. *Covenants:* All property owners' associations shall be created by covenants and restrictions recorded among the land records of the City of Harrisonburg. All such covenants shall include provisions for the maintenance of common open space, facilities and improvements.

(2) Maintenance requirements:

a. *Responsibility:* The property owners' association shall be responsible for the maintenance of all common open space, facilities and improvements in a reasonable condition.

b. *Condition:* All open space areas shall be landscaped as shown on the adopted master development plan and shall be kept in a clean, attractive and safe condition. All open space areas shall be kept open to and available for use by the residents of the planned community.

(g) The approved master development plan shall govern development on the site and shall be used as a basis for subdivision and site plan approval and zoning code enforcement.

(h) The master development plan may be amended after the initial rezoning to R-6. Such amendment is considered an amendment to this ordinance and shall be processed according to the regulations under article U.

(i) The master development plan may be amended solely for a parcel(s) upon application by that parcel's owner, through a zoning map amendment process, subject to determination by the City Council that the proposed use and development plan meets all of the requirements of the original master development

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plan to an equivalent degree in terms of meeting the purposes of the district and protecting the public health, safety, and welfare.

(j) For the purposes of provisions 10-3-56.6 (g) and (h), the ground dimension of any feature (length, width or area) shown on the master development plan, may vary up to 5% of the scaled dimension provided that a written explanation of the variation, as well as a revised drawing of the master development plan reflecting and designating the refinement is submitted to the Zoning Administrator by the owner or applicant. Once the Zoning Administrator determines in writing that the variation conforms to this requirement, the variation becomes part of the approved master development plan. The Zoning Administrator must make a determination within twenty-one (21) calendar days of receiving the explanation from the applicant or owner.

(Ord. of 10-25-05, § 1)

ARTICLE L.2. R-7 MEDIUM DENSITY MIXED RESIDENTIAL PLANNED COMMUNITY

Sec. 10-3-57.1. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "R-7" Medium Density Mixed Residential Planned Community District Regulations.

(Ord. of 10-25-05, § 1)

Sec. 10-3-57.2. Purpose of the district.

This district is intended to provide opportunities for the development of planned residential communities offering a mix of single-family detached and attached dwellings and open spaces, together with certain governmental, educational, religious, recreational and support uses. Under special circumstances, limited multiple-family dwellings may also be included. Innovative residential building types and creative subdivision design solutions are encouraged to promote neighborhood cohesiveness, walkability, connected transportation systems, community green spaces and protection of environmental resources. Communities shall be developed, redeveloped, and amended in accordance with a master development plan adopted at the time of rezoning or a subsequent approved amendment thereof. In order to carry out the intent of this article, planned communities developed under these district regulations and the approved master development plan shall achieve the following design objectives:

(1) A mix of housing types and residential lot sizes and configurations is provided so as to offer a variety of housing opportunities, yet create a cohesive neighborhood that enhances social interaction.

(2) Housing is clustered to preserve valuable environmental resources and provide usable recreational open space.

(3) The open space system is as carefully designed as the housing area so as to offer usable parks, connected green spaces, and village greens and civic spaces visible from roadways and spatially defined by abutting building facades and/or landscape elements.

(4) Vehicular, pedestrian and bicycle transportation is facilitated through a connected system of roads, sidewalks and/or trails so as to provide many choices with regard to mode and route.

(5) Traffic calming techniques may be used to reduce vehicle speed and increase pedestrian and bicycle safety.

(6) Principal buildings address the street, presenting front facades on the publicly visible side of the building.

(7) The visual impact of vehicular off-street parking and garages on public streetscape views is minimized through innovative site planning and building design including parking areas located to the rear of buildings, using architectural design elements such as massing, form, materials and fenestration to make garages visually compatible with inhabited buildings, and parking areas screened with landscape elements.

(8) Neighborhood support uses, such as neighborhood commercial areas, daycare facilities, community centers, churches and schools, are designed so as to be visually compatible with the residential character

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of the neighborhood and accessible by all transportation modes.
(Ord. of 10-25-05, § 1)

Sec. 10-3-57.3. Uses permitted by right:

- (a) Single-family detached dwellings.
 - (b) Single-family attached dwellings (townhouse dwellings of two (2) to eight (8) dwelling units).
 - (c) Multiple-family dwellings with no more than sixteen (16) units per building under conditions set forth in subsections 10-3-57.6, (c) and (d).
 - (d) Home occupations.
 - (e) Community buildings.
 - (f) Public and private schools.
 - (g) Child day care centers.
 - (h) Adult day care centers.
 - (i) Retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities unless permitted by special use permit) food and drug stores.
 - (j) Governmental, business and professional offices and financial institutions.
 - (k) Churches.
 - (l) Parks.
 - (m) Common open space.
 - (n) Public uses.
 - (o) Accessory buildings and uses customarily incidental to any of the above-listed uses.
 - (p) Dwelling units may be occupied by a single family or not more than two (2) persons, except that such occupancy may be superseded by building regulations.
- (Ord. of 10-25-05, § 1; Ord. of 2-24-09(3))

Sec. 10-3-57.4. Uses permitted only by special use permit.

- (a) Private clubs and golf courses.
 - (b) Home for the aged in which three not more than three (3) persons not of the immediate family are provided with food, shelter and care for compensation.
 - (c) Major family day home.
 - (d) Bed and breakfast facilities in which (1) food service shall be limited to breakfast and light fare for room guests only and (2) having space available on premises for one (1) parking space per guest room.
 - (e) Drive-through facility.
- (Ord. of 10-25-05, § 1)

Sec. 10-3-57.5. Area, density and dimensional regulations.

- (a) Minimum district size: Two (2) contiguous acres.
 - (b) Maximum density: Twelve (12) dwelling units per acre.
 - (c) Maximum building height: Forty (40) feet (three (3) stories) for all uses except multiple-family dwellings, fifty (50) feet (four (4) stories) for multiple-family dwellings.
 - (d) Minimum common open space or park: Fifteen (15) percent.
 - (e) Lot area, lot width, lot depth and yards for all uses: requirements as set by the approved master development plan.
 - (f) Unless otherwise specified within the master development plan, the provisions of article T shall apply to the R-7 zoning district.
- (Ord. of 10-25-05, § 1; Ord. of 2-24-09(4))

Sec. 10-3-57.6. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all buildings and uses permitted in this district are governed by

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article G.

(c) At least two (2) types of residential housing types (single-family detached of varying lot sizes/configurations, single-family attached, multiple-family) shall be provided and no one housing or lot size/configuration type may exceed a total of seventy (70) percent of all the residential units in the community. Multiple-family units shall not exceed thirty (30) percent of all the residential units in the community.

(d) Multiple-family development may be approved in an R-7 planned residential community as long as the location of such development is shown on the master development plan and as long as the following conditions are met:

(1) Adequate vehicular, transit, pedestrian and bicycle facilities currently serve or are planned to serve the site.

(2) The applicant has demonstrated that the proposed multifamily development's design is compatible with adjacent existing and proposed single-family detached and attached residential development. Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent single-family detached and attached residential development and public streets are not dominated by large buildings, mechanical/electrical and utility equipment, service/refuse functions and parking lots or garages.

(3) The applicant has shown that the site is environmentally suitable for multiple-family development. There shall be adequate area within the site to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.

(e) Land area within the planned community shown on the master development plan as dedicated to uses permitted under subsection 10-3-57.3(i) and (j) shall not exceed ten (10) percent of the total land area of the planned community. The master development plan shall show how such retail, restaurant and office uses shall be integrated into the residential community so as to not adversely affect local traffic patterns and levels and views from surrounding residential areas and public streets. Such integration shall be achieved through effective site planning, compatible architectural design, and landscaping and screening of parking lots, utilities, mechanical/electrical/telecommunications equipment and service/refuse functions. Buildings shall be residential in design and scale with floorplates not exceeding seven thousand five hundred (7,500) square feet.

(f) Mixed use buildings comprised of retail, office and/or multiple-family dwellings are permitted. The land devoted to such mixed use buildings and the streets, parking and landscape areas serving such buildings, shall be counted toward the maximum area ten (10) percent permitted for uses listed in subsections 10-3-57.3(i) and (j) as regulated by subsection 10-3-57.6(e). The multiple-family dwelling units within mixed use buildings shall be included in the total number of dwelling units in the development and therefore in the calculation of the density for the development.

(g) Applicants for the R-7 zoning district shall submit at rezoning a master development plan, showing and describing in map and text form:

(1) General layout of roads, housing areas, open space, parks, pedestrian and bicycle trails.

(2) General location and number of community building, school, day care, church and public use sites proposed.

(3) Description of housing types/lot configurations to be used with lot areas, minimum widths and depths, minimum yards defined.

(4) Indication on the master development plan of the general location of housing types/lot configurations proposed.

(5) Environmentally sensitive areas: slopes exceeding fifteen (15) percent, streams and 100-year floodplains.

(6) Proposed active recreation areas and recreation facilities.

(7) Proposed general landscape plan (landscape areas, plant materials and general specifications).

(8) Description of how design principles of the district are to be met and proffers, if any, to implement the principles.

(h) Ownership and maintenance of common open space and other common facilities.

(1) *General requirements:*

a. *Organization:* A property owners' association shall be established to provide for the ownership, care and maintenance of all common open space areas and other common facilities and improvements.

b. *Ownership:* All common open space, facilities and improvements shall be dedicated to the property

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owners' association. No land within privately owned lots shall be considered common open space.

c. **Covenants:** All property owners' associations shall be created by covenants and restrictions recorded among the land records of the City of Harrisonburg. All such covenants shall include provisions for the maintenance of common open space, facilities and improvements.

(i) **Maintenance requirements:**

(1) **Responsibility:** The property owners' association shall be responsible for the maintenance of all common open space, facilities and improvements in a reasonable condition.

(2) **Condition:** All open space areas shall be landscaped as shown on the adopted master development plan and shall be kept in a clean, attractive and safe condition. All open space areas shall be kept open to and available for use by the residents of the planned community.

(j) The approved master development plan shall govern development on the site and shall be used as a basis for subdivision and site plan approval and zoning code enforcement.

(k) The master development plan may be amended after the initial rezoning to R-7. Such amendment is considered an amendment to this article and shall be processed according to the regulations under article U.

(l) The master development plan may be amended solely for a parcel(s) upon application by that parcel's owner, through a zoning map amendment process, subject to determination by the City Council that the proposed use and development plan meets all of the requirements of the original master development plan to an equivalent degree in terms of meeting the purposes of the district and protecting the public health, safety, and welfare.

(m) For the purposes of provisions 10-3-57.6 (g) and (h), the ground dimension of any feature (length, width or area) shown on the master development plan, may vary up to 5% of the scaled dimension provided that a written explanation of the variation, as well as a revised drawing of the master development plan reflecting and designating the refinement is submitted to the Zoning Administrator by the owner or applicant. Once the Zoning Administrator determines in writing that the variation conforms to this requirement, the variation becomes part of the approved master development plan. The Zoning Administrator must make a determination within twenty-one (21) calendar days of receiving the explanation from the applicant or owner.

(Ord. of 10-25-05, § 1)

ARTICLE L.3. MX-U MIXED USE PLANNED COMMUNITY DISTRICT

Sec. 10-3-58.1. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "MX-U" Mixed Use Planned Community District Regulations.
(Ord. of 2-24-09(5))

Sec. 10-3-58.2. Purpose of the district.

This district is intended to provide opportunities for the development of planned mixed use communities offering an integrated and compatible mix of residential, commercial and employment uses and open spaces, together with certain governmental, educational, religious, recreational and support uses. Innovative building types and creative subdivision design solutions are encouraged to promote neighborhood cohesiveness, walkability, connected transportation systems, community green spaces and protection of environmental resources. Communities shall be developed and redeveloped in accordance with a master development plan adopted at the time of rezoning or a subsequent approved amendment thereof. In order to carry out the intent of this article, planned communities developed under these district regulations and the approved master development plan shall achieve the following design objectives:

(1) A mix of uses is provided so that residents can live, work, shop, and carry out many of life's other activities within the neighborhood.

(2) Uses are well-integrated rather than widely separated and buffered. Compatibility between different uses is achieved through effective site planning and orientation of site and building access and entry, compatible architectural design, and landscaping and screening of parking lots, utilities, mechanical/electrical/telecommunications equipment and service/refuse functions.

(3) Development is clustered to preserve valuable environmental resources and provide usable

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recreational open space.

(4) The open space system is as carefully designed as the development area so as to offer usable parks, connected green spaces, and village greens and civic spaces visible from roadways and spatially defined by abutting building facades and/or landscape elements.

(5) Vehicular, pedestrian and bicycle transportation is facilitated through a connected system of roads, sidewalks and/or trails so as to provide many choices with regard to mode and route. The proximity and integration of uses allows residents to walk, ride a bicycle, or take transit for many trips between home, work, shopping, and school.

(6) The overall intensity of development is designed to be high enough to support transit service.

(7) Traffic calming techniques may be used to reduce vehicle speed and increase pedestrian and bicycle safety.

(8) Principal buildings address the street, presenting front facades on the publicly visible side of the building.

(9) The visual impact of vehicular off-street parking and garages on public streetscape views is minimized through innovative site planning and building design, including parking areas located to the rear of buildings, use of architectural design elements such as massing, form, materials, and fenestration to make garages visually compatible with inhabited buildings, and parking areas screened with landscape elements.

(Ord. of 2-24-09(5))

Sec. 10-3-58.3. Uses permitted by right:

[The following uses are permitted by right:]

(1) Single-family detached dwellings.

(2) Duplex dwellings.

(3) Townhouse dwellings (three (3) to eight (8) dwelling units).

(4) Multiple-family dwellings.

(5) Dwelling units may be occupied by a single family or not more than two (2) unrelated individuals.

(6) Home occupations.

(7) Retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive-through facilities unless permitted by special use permit), food, and drug stores.

(8) Governmental, business and professional offices and financial institutions.

(9) General service or repair shops, when not employing more than ten (10) persons on the premises in a single shift (not including persons whose principal duties are off the premises) and providing that all storage and activities are conducted within a building. Examples: cleaning and laundry establishments, tailoring shops, print and copy shops, appliance repairs, upholstery and furniture repairs.

(10) Theaters, museums and galleries and other places of assembly for the purpose of entertainment or education.

(11) Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities.

(12) Community buildings.

(13) Public and private schools.

(14) Child day care centers.

(15) Adult day care centers.

(16) Parks.

(17) Common open space.

(18) Public uses.

(19) Accessory buildings and uses customarily incidental to any of the above-listed uses.

(Ord. of 2-24-09(5))

Sec. 10-3-58.4. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

(1) Private clubs and golf courses.

(2) Home for the aged in which not more than (3) persons not of the immediate family are provided with food, shelter and care for compensation.

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- (3) Major family day home.
 - (4) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one (1) parking space per guest room.
 - (5) Drive-through facility.
- (Ord. of 2-24-09(5))

Sec. 10-3-58.5. Area, density and dimensional regulations.

[The following area, density and dimensional regulations apply:]

- (1) Minimum district size: Three (3) contiguous acres, unless adjacent to an established MX-U District.
 - Note: Properties that are not three (3) contiguous acres shall meet all regulations of the MX-U District.
 - (2) Maximum density: ~~On average fifteen (15)~~ Twenty (20) dwelling units per acre.
 - (3) Minimum common open space or park: Fifteen (15) percent of the total original tract must be maintained in common open space or parkland. Each individual parcel on the original plan need not meet this requirement. Any tract that may be added to the original tract subsequent to the original zoning approval must have fifteen (15) percent of that particular tract in common open space or park.
 - (4) Maximum building height, lot area, lot width, lot depth and yards for all uses: Requirements as set by the approved master development plan.
 - (5) Unless otherwise specified within the master development plan, the provisions of Article T shall apply to the MX-U zoning district.
 - (6) Building floorplates: building floorplates shall not exceed twenty thousand (20,000) square feet, except as approved in the master development plan and subject to the standards in section 10-3-58.6(g).
- (Ord. of 2-24-09(5))

Sec. 10-3-58.6. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in this district and shall not be permitted in front yards. Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking shall be proposed and shown for all buildings and uses.
- (1) Off-street parking shall not be located between the street and the front building facade, and preferably sited to the rear of buildings. Off-street parking shall be screened to have minimal impact on the streetscape.
- (2) Bicycle racks shall be included at appropriate locations and provided at a minimum of one (1) bicycle rack accommodating a minimum of four bicycles for every one hundred (100) off-street parking spaces.
- (3) Bus shelters shall be provided at designated transit stop locations as specified by the transportation department.
- (c) There shall be adequate area within the site to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.
- (d) Mix of uses: The MX-U planned community shall provide a mix of uses meeting the following minimums and maximums:

| Land Uses | % of Net Development Area | |
|--|---|----------------|
| | Minimum | Maximum |
| (1) Parks, common open space (10-3-58.3(16) & (17)) | 15% | None specified |
| (2) Retail, service (10-3-58.3(7), (9), (14) & (15)) | 5% | 30% |
| (3) Employment, office (10-3-58.3(8)) | No minimum | 30% |
| (4) Residential (10-3-58.3(1), (2), (3), (4) & (6)) | No less than <u>50%</u> (2) & (3) combined— | 80% |
| (5) Other permitted uses | None specified | None specified |

- (e) At least two (2) types of residential housing types (single-family detached of varying lot

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sizes/configurations, single-family attached, multiple-family) shall be provided and no one (1) housing or lot size/configuration type may exceed a total of seventy (70) percent of all the residential units in the community.

- (f) Mixed use buildings comprised of retail, office ~~and/or multiple-family dwellings~~ are permitted. The land devoted to such mixed use buildings and the streets, parking and landscape areas serving such buildings, shall be counted toward the maximum area permitted for either retail-service ~~and/or employment-office uses, which ever is the predominant nonresidential use type in the building.~~ The multiple-family dwelling units within mixed use buildings shall be included in the total number of dwelling units in the development and therefore in the calculation of the density for the development.
- (g) Buildings having a floorplate larger than twenty thousand (20,000) square feet, but no more than sixty thousand (60,000) square feet, may be approved as part of a master development plan for a MX-U planned community if the applicant demonstrates that the proposed building's design is compatible with adjacent development (contiguous or across the street). Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent residential development and public streets are not dominated by the building, mechanical/electrical and utility equipment, service/refuse functions or associated parking lots or garages.
- (h) Applicants for the MX-U zoning district shall submit at rezoning a master development plan, showing and describing in map and text form:
 - (1) General layout of roads, housing areas, open space, parks, pedestrian and bicycle trails.
 - (2) General location and number of community building, school, day care, church and public use sites proposed.
 - (3) Description of housing types/lot configurations to be used with lot areas, minimum widths and depths, minimum yards defined.
 - (4) Description of all other uses proposed for the MX-U development.
 - (5) Indication on the master development plan of the general location of housing types/lot configurations and other uses proposed.
 - (6) Environmentally sensitive areas: slopes exceeding fifteen (15) percent, streams and 100-year floodplains.
 - (7) Proposed active recreation areas and recreation facilities.
 - (8) Proposed general landscape plan (landscape areas, plant materials and general specifications).
 - (9) Description of how design principles of the district are to be met and other details, if any, to implement the principles.
 - (i) Ownership and maintenance of common open space and other common facilities.
- (1) Unless all real property within the district is owned by a single entity, the following general requirements apply:
 - a. Organization: A property owners' association shall be established to provide for the ownership, care and maintenance of all common open space areas and other common facilities and improvements.
 - b. Ownership: All common open space, facilities and improvements shall be dedicated to the property owners' association. No land within privately owned lots shall be considered common open space.
 - c. Covenants: All property owners' associations shall be created by covenants and restrictions recorded among the land records of the City of Harrisonburg. All such covenants shall include provisions for the maintenance of common open space, facilities and improvements.
- (2) Maintenance requirements:
 - a. Responsibility: The property owners' association shall be responsible for the maintenance of all common open space, facilities and improvements in a reasonable condition.
 - b. Condition: All open space areas shall be landscaped as shown on the adopted master development plan and shall be kept in a clean, attractive and safe condition. All open space areas shall be kept open to and available for use by the residents of the planned community.
 - (j) The approved master development plan shall govern development on the site and shall be used as a basis for subdivision and site plan approval and zoning code enforcement.
 - (k) The master development plan may be amended after the initial rezoning to MX-U. Such amendment is considered an amendment to this ordinance and shall be processed according the regulations under Article U.
 - (l) The master development plan may be amended solely for a parcel(s) upon application by that parcel's owner, through a zoning map amendment process, subject to determination by the City Council that the

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proposed use and development plan meets all of the requirements of the original master development plan to an equivalent degree in terms of meeting the purposes of the district and protecting the public health, safety, and welfare.

(m) For the purposes of provisions 10-3-58.6 (h) and (i) the ground dimension of any feature (length, width or area) shown on the master development plan, may vary up to 5% of the scaled dimension provided that a written explanation of the variation, as well as a revised drawing of the master development plan reflecting and designating the refinement is submitted to the Zoning Administrator by the owner or applicant. Once the Zoning Administrator determines in writing that the variation conforms to this requirement, the variation becomes part of the approved master development plan. The Zoning Administrator must make a determination within 21 calendar days of receiving the explanation from the applicant or owner.
(Ord. of 2-24-09(5))

Sec. 10-3-59. Reserved.

ARTICLE M. MH-1 MANUFACTURED HOME PARK DISTRICT

Sec. 10-3-60. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "MH-1" Manufactured Home Park District.
(Ord. of 4-23-96)

Sec. 10-3-61. Purpose of district.

This district is intended to permit the development of manufactured home parks for residential occupancy, as rental projects on sites of not less than five (5) contiguous acres in those areas of the city adequately provided with street access, approved water supply and sewers. In addition, certain convenience facilities and recreational facilities are permitted, subject to restrictions and requirements intended to preserve and protect the residential character of the manufactured home park development.
(Ord. of 4-23-96)

Sec. 10-3-62. Uses permitted by right.

The following uses are permitted in an MH-1 Manufactured Home Park District:

- (1) Manufactured homes in a manufactured home park on a site of five (5) or more contiguous acres.
- (2) Home occupations as herein defined.
- (3) Incidental buildings limited to noncommercial community use, laundry facilities or office facilities needed for management. Such buildings are subject to the same lot and setback standards applicable for the manufactured homes, but cannot be attached to a manufactured home.
- (4) Accessory uses appurtenant to the operation of a manufactured home park, such as recreational areas including swimming pools, picnic shelters and accessory storage buildings.
- (5) Private accessory buildings of not more than one hundred twenty (120) square feet, to be located only in the rear yard of a manufactured home lot, and at least five (5) feet from the property line or any easements on the property.
- (6) Public uses.
(Ord. of 4-23-96)

Sec. 10-3-63. Uses permitted only by special use permit.

None.
(Ord. of 4-23-96)

Sec. 10-3-64. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

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| Lot Area Per Manufactured | MINIMUM FEET | | | | | MAXIMUM | |
|---------------------------|--------------|-----------|-----------|------------|-----------|-----------|----------|
| | Home Sq. Ft. | Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Ht. Feet |
| Singlewide: | | | | | | | |
| 3,200 | 40 | 80 | 10 | 10 | 10 | One | 15 |
| Doublewide: | | | | | | | |
| 4,200 | 50 | 80 | 10 | 10 | 10 | One | 15 |

(1) The manufactured home park shall be surrounded by a landscaped or wooded strip of open space at least fifty (50) feet wide along all street or road frontage and along all other exterior boundary lines. This space shall be in addition to space required for each manufactured home site and shall not be used for other park facilities, recreation area or accessory storage structures or parking areas. The site plan shall include a landscape plan for this open space indicating planting of shade trees and lower plant materials for open portions of the space and a plan for tree maintenance in wooded portions. Continued maintenance of the open area and its planting shall be the responsibility of the owner or operator of the park.

(2) All manufactured homes shall be placed in a designed manufactured home space and shall not obstruct the use of or project over, any driveway, walkway or public utility easement.

(3) Private accessory buildings of not more than one hundred twenty (120) square feet may be located in the rear yard of a manufactured home space. Accessory buildings, porches, decks, awnings or canopies shall be located at least five (5) feet from the boundaries of the individual manufactured home site.

(4) Each manufactured home site shall provide at least two (2) shade trees and provide an appropriate outdoor living space to supplement limited interior space of a manufactured home. The minimum size of each space shall be two hundred fifty (250) square feet. Every such space shall be convenient to the entrance of the manufactured home, appropriately related to open areas of the lot and other facilities off the lot, and adapted to terrain and natural features and to anticipated manufactured home models.

(5) An approved area or areas of at least ten thousand (10,000) square feet of usable space shall be provided for recreational use by residents of the park.

(6) All manufactured homes shall be completely skirted with materials approved by the administrator.

(Ord. of 4-23-96; Ord. of 11-25-08(2))

Sec. 10-3-65. Other regulations.

(a) Number and location of access drives shall be controlled for traffic safety and protection of surrounding properties, and no manufactured home site shall be designed for direct access to a street outside the boundaries of the park. Interior access drives shall be properly lighted, with right-of-way at least fifty (50) feet in width, and paved at least thirty-two (32) feet in width in accord with applicable city specifications. Utilities and wiring shall be underground.

(b) At least one (1) off-street parking space shall be provided on each manufactured home site, and, in addition, one (1) off-street space shall be provided per manufactured home in other locations convenient to groups of homes. No parking shall be permitted on the street. A special area shall be designed for accessory storage of boats and boat trailers, campers and other recreational vehicles. All required

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parking shall be clearly defined.
(Ord. of 4-23-96)

Sec. 10-3-66. Permits and fees.

[The following provisions shall apply to the permits and fees for placement of manufactured homes within this district:]

- (1) A manufactured home shall be placed only after a manufactured home placement permit has been obtained from the department of building inspection.
 - (2) No manufactured home shall be occupied until final inspection has been completed by the department of building inspection.
 - (3) Placement permit . . . \$10.00
 - (4) Electrical permit . . . 6.50
 - (5) Plumbing permit . . . 6.50
 - (6) If the required inspection reveals any discrepancy, a re-inspection fee of twelve dollars and fifty cents (\$12.50) shall be required for each re-inspection to the site. Such fee shall be paid prior to the additional inspections being given.
- (Ord. of 4-23-96)

Sec. 10-3-67. Violations and penalties.

Any person, firm or corporation or agent who shall violate, cause to violate or permit the violation of the Virginia Industrial Building and Manufactured Home Safety Regulations, the current edition of which regulations and any future amendments thereto are hereby incorporated by reference, or this article shall be guilty of a Class 3 misdemeanor as outlined in title 1, chapter 1, section 1-1-6 of the Harrisonburg City Code. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed or continued.

(Ord. of 4-23-96)

ARTICLE N. MH-2 MANUFACTURED HOME SUBDIVISION DISTRICT

Sec. 10-3-68. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "MH-2" Manufactured Home Subdivision District.

(Ord. of 4-23-96)

Sec. 10-3-69. Purpose of district.

This district is intended to permit the development of manufactured home subdivisions for residential occupancy as a subdivision of individually owned manufactured homes on sites of not less than five (5) contiguous acres in those areas of the city adequately provided with street access, approved water supply and sewers. In addition, certain convenience facilities and recreational facilities are permitted, subject to restrictions and requirements intended to preserve and protect the residential character of the manufactured home subdivision.

(Ord. of 4-23-96)

Sec. 10-3-70. Uses permitted by right.

The following uses are permitted in an MH-2 Manufactured Home Subdivision District:

- (1) Manufactured homes in a manufactured home subdivision on a site of five (5) or more contiguous acres.
- (2) Home occupation, as herein defined.
- (3) Incidental buildings limited to noncommercial community use, laundry facilities or office facilities needed for management. Such buildings are subject to the same lot and setback standards applicable for the manufactured homes, but cannot be attached to a manufactured home.
- (4) Accessory uses appurtenant to the operation of a manufactured home park, such as recreational

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areas including swimming pools, picnic shelters and accessory storage buildings.

- (5) Private accessory buildings of not more than one hundred twenty (120) square feet, to be located only in the rear yard of a manufactured home lot, and at least five (5) feet from the property line or any easements on the property.

- (6) Public uses.
- (Ord. of 4-23-96)

Sec. 10-3-71. Uses permitted only by special use permit.

None.

(Ord. of 4-23-96)

Sec. 10-3-72. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot Area Per Manufactured Home | MINIMUM FEET | | | | MAXIMUM | | |
|--------------------------------------|--------------|--------------|---------------|--------------|--------------|---------|-------------|
| | Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Ht. Feet |
| Single or Doublewide 5,000 | 50 | 70 | 20 | 10 | 15 | One | 15 |

(1) The manufactured home subdivision shall be surrounded by a landscaped or wooded strip of open space at least fifty (50) feet wide along all street or road frontage and along all other exterior boundary lines. This space shall be in addition to minimum area required for each manufactured home lot and shall not be used for other facilities, recreation area or accessory storage structures or parking areas, but may be included as extra depth for individual lots if appropriately restricted by easement. The subdivision plan shall include a landscape plan for this open space indicating planting of shade trees and lower plant materials for open portions of the space and a plan for tree maintenance in wooded portions. Continued maintenance of the open area and its planting shall be the responsibility of the homeowner's association or lot owners as the case may require.

(2) All manufactured homes shall be placed on a designed manufactured home lot and shall not obstruct the use of or project over, any driveway, walkway or public utility easement.

(3) Private accessory building of not more than one hundred twenty (120) square feet may be located in the rear yard of a manufactured home lot. Accessory buildings, porches, decks, awnings or canopies shall be located at least five (5) feet from the boundaries or open space easement of the individual manufactured home site.

(4) An approved area or areas of at least ten thousand (10,000) square feet of usable open space shall be provided for recreational use by residents of the subdivision. A homeowners' association shall be organized for maintenance of recreational areas which are not to be maintained by the developer.

(5) All manufactured homes shall be completely skirted with materials approved by the administrator.

(Ord. of 4-23-96; Ord. of 11-25-08(2))

Sec. 10-3-73. Other regulations.

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(a) Number and location of access drives shall be controlled for traffic study and protection of surrounding properties, and no manufactured home site shall be designed for direct access to a street outside the boundaries of the park. Interior access drives shall be properly lighted, with right-of-way at least fifty (50) feet in width, and paved at least thirty-two (32) feet in width in accord with applicable city specifications. Utilities and wiring shall be underground.

(b) At least one (1) off-street parking space shall be provided on each manufactured home site, and, in addition, one (1) off-street space shall be provided per manufactured home in other locations convenient to groups of homes. No parking shall be permitted on the street. A special area shall be designed for accessory storage of boats. All required parking shall be clearly defined.

(Ord. of 4-23-96)

Sec. 10-3-74. Permits and fees.

[The following provisions shall apply to the permits and fees for placement of manufacture homes within this district:]

(1) A manufactured home shall be placed only after a manufactured home placement permit has been obtained from the department of building inspection.

(2) No manufactured home shall be occupied until final inspection has been completed by the department of building inspection.

(3) Placement permit . . . \$10.00

(4) Electrical permit . . . 6.50

(5) Plumbing permit . . . 6.50

(6) If the required inspection reveals any discrepancy, a re-inspection fee of twelve dollars and fifty cents (\$12.50) shall be required for each re-inspection to the site. Such fee shall be paid prior to the additional inspections being given.

(Ord. of 4-23-96)

Sec. 10-3-75. Violations and penalties.

Any person, firm or corporation or agent who shall violate, cause to violate or permit the violation of the Virginia Industrialized Building and Manufactured Home Safety Regulations, the current edition of which regulations and any future amendments thereto are hereby incorporated by reference, or this article shall be guilty of a Class 3 misdemeanor as outlined in Title 1, Chapter 1, section 1-1-6 of the Harrisonburg City Code. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed or continued.

(Ord. of 4-23-96)

ARTICLE O. B-1A LOCAL BUSINESS DISTRICT

Sec. 10-3-76. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "B-1A" Local Business District regulations.

(Ord. of 4-23-96)

Sec. 10-3-77. Purpose of district.

This district is intended to provide primarily for retail shopping and personal service uses to be developed either as integrated units or as individual parcels to serve the needs of a relatively small area, primarily nearby, low-density or medium-density residential neighborhoods. To enhance the general character of the district, its function of local and neighborhood service, and its compatibility with its residential surroundings, the size of certain uses is limited.

(Ord. of 4-23-96)

Sec. 10-3-78. Uses permitted by right.

[The following uses are permitted by right:]

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(1) Retail stores, convenience shops, personal service establishments, restaurants, drive-in or otherwise, food and drug stores.

(2) Governmental, business and professional offices and financial institutions.

(3) Vehicle fuel stations consisting of an office and pumps for the sale of fuel and lubricants, so long as bulk storage of flammable liquids is underground.

(4) Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities.

(5) Public and privately owned parking lots.

(6) Accessory buildings and uses customarily incidental to any of the above-listed uses.

(7) Public uses.

(Ord. of 4-23-96; Ord. of 8-12-03)

Sec. 10-3-79. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

(1) Reducing required parking areas to permit fewer than the required number of parking spaces for any use, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.

(Ord. of 4-23-96; Ord. of 6-24-97)

Sec. 10-3-80. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

Minimum Setback:

Front--Thirty (30) feet.

Side--Ten (10) feet.

Rear--Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet.

Maximum Building Height:

Stories--Two and one-half (2 1/2), not to exceed thirty-five (35) feet.

(Ord. of 4-23-96; Ord. of 11-25-08(2))

Sec. 10-3-81. Other regulations.

(a) Provisions for off-street parking and loading regulations within this district shall comply with article G.

(b) Provisions for parking lot landscaping regulations within this district shall comply with article G also.

(c) Unless modified or superseded by other ordinances which directly apply to the general health, safety and welfare of the public, all accessory storage or products to be processed or being processed, and supplies and waste materials resulting from such work, shall be completely enclosed within the structures of permanent and durable construction. In addition, all on-site refuse containers or refuse storage facilities shall be located within a designated area and screened from general public view by means appropriate to the appearance of this district.

(Ord. of 4-23-96)

ARTICLE P. B-1 CENTRAL BUSINESS DISTRICT

Sec. 10-3-82. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "B-1" central business district regulations.

(Ord. of 4-23-96)

Sec. 10-3-83. Purpose of district.

This district is the urban and regional center for the conduct of commercial, financial, professional and governmental activities to which the public requires direct and frequent access. These regulations are

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intended to protect and improve activities, and to prevent uses not requiring a central location which would create friction in the efficient performance of the primary activities of an urban and regional center. In addition, both transient and nontransient housing facilities are permitted within limits that will assure a supporting role to the primary functions of the district.
(Ord. of 4-23-96)

Sec. 10-3-84. Uses permitted by right.

[The following uses are permitted by right:]

- (1) Retail stores, convenience shops, personal service establishments, restaurants, food and drug stores.
- (2) Governmental, business and professional offices and financial institutions.
- (3) Hotels, motels and building used for dwelling unit(s), CBD, as defined under section 10-3-24, Dwelling unit(s), CBD, may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.
- (4) Theaters, community rooms, museums and galleries and other places of assembly for the purpose of entertainment or education.
- (5) Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities.
- (6) General service or repair shops, when not employing more than fifteen (15) persons on the premises in a single shift (not including persons whose principal duties are off the premises) and providing that all storage and activities are conducted within a building. Examples: Cleaning and laundry establishments, printing and tailoring shops, appliance repairs, upholstery and furniture repairs.
- (7) Public and privately owned parking lots and parking garages.
- (8) Accessory uses incidental to any permitted uses which are attached to or within the principal building.
- (9) Telecommunications equipment and facilities, provided such equipment and facilities are located in an enclosed structure.
- (10) Public libraries.
- (11) Public uses.
- (12) Research and development activities which do not cause any more smoke, dust, odor, noise, vibration or danger of explosion other than uses permitted in this district and which involve no more than fifteen (15) percent of the gross floor area in the assembling or processing of products. Any assembling or processing shall only involve products developed on the premises. All services and storage shall be conducted within the principal structure which is to be completely enclosed.
(Ord. of 4-23-96; Ord. of 2-22-02; Ord. of 3-26-02; Ord. of 1-11-05)

Sec. 10-3-85. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Processing and assembly operations when not employing more than ten (10) persons on the premises in a single shift and provided that all storage and activities are conducted within a building.
- (2) Telecommunications equipment and facilities not located in an enclosed structure.
- (3) Vehicle recreation equipment, or trailer sales served by a permanent building facility unless clearly incidental to an existing building. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
- (4) Repair of vehicles, recreation equipment, or trailers with all activities and storage of inoperable vehicles completely enclosed within a permitted structure. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
- (5) Structures in excess of seventy-five (75) feet in height.
- (6) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
- (7) Transportation service facilities, including but not limited to: taxicabs. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.

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(Ord. of 4-23-96; Ord. of 10-28-97; Ord. of 8-12-03; Ord. of 1-13-04; Ord. of 4-27-04, § 1; Ord. of 7-26-05; Ord. of 1-23-08)

Sec. 10-3-86. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

Minimum Setback:

Front--None.

Side--None--Zero (0) setback conditions may be superseded by building code regulations.

Rear--None.

Maximum Building Height:

Seventy-five (75) feet unless superseded by special use permit subsection 10-3-85(5).

(Ord. of 4-23-96; Ord. of 4-27-04, § 1; Ord. of 11-25-08(2))

Sec. 10-3-87. Other regulations.

(a) There are no minimum off-street parking requirements for uses in this district; provided, however, that when off-street parking is offered, such parking shall comply with the design standards under article G. In addition, loading and unloading facilities for all new buildings or additions shall comply with the design standards under article G.

(b) Unless modified or superseded by other ordinances which directly apply to the general health, safety and welfare of the public, all accessory storage of products to be processed or being processed, and supplies and waste materials resulting from such work, shall be completely enclosed within structures of permanent and durable construction. In addition, all on-site refuse containers or refuse storage facilities shall be located within a designated area and screened from general public view by means appropriate to the appearance of this district.

(Ord. of 4-23-96)

ARTICLE Q. B-2 GENERAL BUSINESS DISTRICT

Sec. 10-3-88. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the "B-2" General Business District regulations.

(Ord. of 4-23-96)

Sec. 10-3-89. Purpose of district.

This district is intended to provide a sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, and miscellaneous recreational and service activities generally serving the city, a wide area of the region, and the traveling public, and generally located along major thoroughfares or near development centers where a general mixture of commercial and service activity now exists or is planned, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, or the nuisance factors of dust, or odor and noise associated with manufacturing.

(Ord. of 4-23-96)

Sec. 10-3-90. Uses permitted by right.

[The following uses are permitted by right:]

- (1) Mercantile establishments which promote the show, sale and rental of goods, personal service establishments, restaurants and other shops and stores customary to shopping centers and convenience outlets.
- (2) Governmental, business and professional offices and financial institutions.
- (3) Hotels, motels and similar types of transient accommodations. Nontransient housing facilities are not permitted nor may existing housing facilities be expanded.
- (4) Theaters, community rooms, museums and galleries and other places of assembly for the purpose of entertainment or education. In addition, customary recreational and leisure-time activities which are

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compatible with surrounding uses are permitted.

- (5) Religious, educational, charitable or benevolent institutional uses which do not provide housing facilities.
 - (6) Vehicle, recreation equipment, or trailer sales served by a permanent building facility unless clearly incidental to an existing building. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
 - (7) Repair of vehicles, recreation equipment, or trailers with all activities and storage of inoperable vehicles completely enclosed within a permitted structure. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment.
 - (8) General service or repair shops permitted by right in the B-1 Central Business district but without the limitation as to the number of employees.
 - (9) Pet shop or pet grooming establishment and animal hospitals.
 - (10) Radio and television stations and studios or recording studios.
 - (11) Public utilities, public service or public transportation uses or buildings, generating, purification or treatment plants, water storage tanks, pumping or regulator stations, telephone exchange and transformer or substations.
 - (12) Warehousing and other storage facilities with floor area limited to twenty thousand (20,000) square feet, which are contiguous to permitted uses in this district.
 - (13) Funeral homes.
 - (14) Public and privately owned parking lots and parking garages.
 - (15) Accessory buildings and uses customarily incidental to any of the above listed uses.
 - (16) Research and development activities which do not cause any more smoke, dust, odor, noise, vibration or danger of explosion than other uses permitted in this district and which involve no more than fifteen (15) percent of the gross floor area in the assembling or processing of products. Any assembling or processing shall only involve products developed on the premises. All services and storage shall be conducted within the principal structure which is to be completely enclosed.
 - (17) Plant nurseries and greenhouses provided any outside storage of materials, other than plants, must be screened.
 - (18) Public uses.
 - (19) Vehicle fuel stations, bus terminals or other facilities designed for vehicular convenience. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
- (Ord. of 4-23-96; Ord. of 8-12-03)

Sec. 10-3-91. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Processing and assembly operations when not employing more than ten persons on the premises in a single shift and provided that all storage and activities are conducted within a building.
- (2) Warehousing and other storage facilities, greater than twenty thousand (20,000) square feet, continuous to permitted uses.
- (3) Facilities designed for the repair or storage of over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, or agricultural equipment served by a permanent building facility unless already incidental to an existing building. In addition, any outside storage or repair shall be located within a designated area and screened from general public view.
- (4) Communications tower no more than one hundred twenty-five (125) feet in height.
- (5) Inside kennels for boarding.
- (6) Building material sales and storage yards, contractors equipment sales and storage yards and other similar uses, provided they are served by a permanent building facility unless clearly incidental to an existing building.
- (7) College or university buildings which are either owned or leased by such institutions and are adjacent or contiguous to the primary campus of the college or university.

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- (8) Reducing required parking areas to permit fewer than the required number of parking spaces for any use, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.
 - (9) Reduction in the required side yard setback to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1.
 - (10) Facilities designed for the sales or convenience of over the road tractors, their trailers, and heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment served by a permanent building facility unless already incidental to an existing building. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
 - (11) Transportation service facilities, including but not limited to: taxicab, limousine, or bus. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
 - (12) Structures in excess of seventy-five (75) feet in height.
 - (13) Operational facilities of volunteer rescue squads may provide non-transient housing, for up to four (4) active members of the organization, so long as each individual resides at the facility no more than twenty-four (24) cumulative months.
 - (14) Adult businesses.
 - (15) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
- (Ord. of 4-23-96; Ord. of 11-12-96; Ord. of 6-24-97; Ord. of 9-21-99; Ord. of 8-12-03; Ord. of 1-25-05, § 1; Ord. of 3-22-05; Ord. of 6-14-05; Ord. of 7-26-05; Ord. of 1-10-06, § 1)
- Editor's note: An ordinance enacted June 24, 1997, amended § 10-3-91 by enacting provisions numbered § 10-3-91(7). Inasmuch as § 10-3-91 already contained provisions designated as (7), the editor has redesignated these new provisions as (8).

Sec. 10-3-91.1. Special use criteria for adult businesses.

- (a) Unless the applicant consents to a longer period of review, an application for a special use permit for an adult business must be approved or denied within ninety (90) days of the filing of a complete application.
 - (b) In reviewing the application, the planning commission and city council may consider the following factors as well as other appropriate land use considerations:
 - (1) The nature of the surrounding area and the extent to which the proposed use might significantly impair its present or future development;
 - (2) The proximity of dwellings, churches, schools, parks or other places of public gatherings, and no adult business shall be located within one thousand (1,000) feet of a church, school, park or residential area;
 - (3) The probable effect of the proposed use on the peace and enjoyment of people in their homes;
 - (4) The limitations of fire and rescue equipment and the means of access for fire and police protection;
 - (5) The preservation of cultural and historical landmarks and trees;
 - (6) The probable effect of noise, vibrations, and glare upon the uses of surrounding properties;
 - (7) The conservation of property values;
 - (8) The contribution, if any, such proposed use would make toward the deterioration of the area and neighborhoods; and
 - (9) The probable effect that alcohol sales or consumption at the adult business would have in heightening the risk of violations of local laws, and any negative secondary effects on surrounding properties and the neighborhood.
 - (c) If an application for a special use permit for an adult business is denied and the applicant desires to appeal the denial, the city will facilitate the applicant's obtaining prompt review of the decision from the Circuit Court of Rockingham County. Unless the applicant agrees to an extension, the city will file a responsive pleading within ten (10) days of service upon the city of an appeal, will file a responsive brief within fifteen (15) days of service of the applicant's brief and will agree to any reasonable expedited trial or hearing date.
- (Ord. of 6-14-05)

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Sec. 10-3-92. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

Minimum setback:

Front--Thirty (30) feet.

Side--Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Rear--Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one additional foot of setback is required for each foot above thirty-five (35) feet.

Maximum building height:

Seventy-five (75) feet unless superseded by special use permit 10-3-91(12).

Structures not designed for human occupancy but which may provide accessory uses, such as parking facilities, shall be restricted to seventy-five (75) feet in height.

(Ord. of 4-23-96; Ord. of 1-25-05, § 1; Ord. of 1-10-06, § 1; Ord. of 11-25-08(2))

Sec. 10-3-93. Other regulations.

(a) Provisions for off-street parking and loading regulations within this district shall comply with article G.

(b) Provisions for parking lot landscaping regulations within this district shall comply with article G also.

(c) Unless modified or superseded by other ordinances which directly apply to the general health, safety and welfare of the public, all accessory storage of products to be processed or being processed, and supplies and waste materials resulting from such work, shall be completely enclosed within structures of permanent and durable construction. In addition, all on-site refuse containers or refuse storage facilities shall be located within a designated area and screened from general public view by means appropriate to the appearance of this district.

(Ord. of 4-23-96)

ARTICLE R. M-1 GENERAL INDUSTRIAL DISTRICT

Sec. 10-3-94. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "M-1" general industrial district.

(Ord. of 4-23-96)

Sec. 10-3-95. Purpose of district.

(a) This district is intended primarily for manufacturing, processing, storage and distribution activities which are not properly associated with, nor compatible with, residential and institutional development. Certain potentially hazardous industries are permitted only after public hearings and review to assure protection of the public interest and surrounding property and persons. In order to preserve the land for industry, to reduce extraneous traffic, and avoid future conflicts between industry and other uses, retail and office uses are limited to those which will be useful primarily to employees in the district.

(b) It is further intended to encourage adequate off-street parking, loading spaces and other on site improvements that preserve the carrying capacity of public streets.

(Ord. of 4-23-96)

Sec. 10-3-96. Uses permitted by right.

[The following uses are permitted by right:]

(1) Industrial operations for the manufacturing, processing, storage or treatment of products which are not customarily found in retail centers. It is intended that the industrial use shall not endanger surrounding uses or create severe pollution problems.

(2) Warehousing and other storage facilities; provided, that the size, volume and contents shall be

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governed by applicable safety regulations.

(3) Grain and feed manufacturing buildings, storage facilities and equipment which is compatible with local agricultural industry.

(4) Cold storage and similar special purpose buildings which house food and produce operations, etc.

(5) Veterinary supply and service establishments including hospitals, laboratories and kennels.

(6) Building material sales and storage yards, contractors, equipment sales and storage yards and other similar uses, provided they are served by a permanent building facility unless clearly incidental to an existing building.

(7) Maintenance and repair shops.

(8) Vehicles, recreation equipment, trailers, over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, or agricultural equipment sales or storage served by a permanent building facility unless already incidental to an existing building. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.

(9) Mercantile establishments and office facilities accessory to and supportive of the sale, processing and storage of goods and materials as permitted in this district.

(10) Hotels, motels and similar types of transient accommodations. Nontransient housing facilities are not permitted nor may existing housing facilities be expanded.

(11) Accessory buildings and uses customarily incidental to any of the above-listed uses.

(12) Training facilities and vocational schools.

(13) Public utilities, public service or public transportation uses or building, generating, purification or treatment plants, water storage tanks, pumping or regulator stations, telephone exchange and transformer or substations.

(14) Vehicle fuel station.

(15) Communications towers no more than one hundred twenty-five (125) feet in height.

(16) Plant nurseries and greenhouses.

(17) Public uses.

(18) Public and privately owned parking lots and parking garages.

(19) Vehicles, recreation equipment, trailers, over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, or agricultural equipment repair or storage served by a permanent building facility unless already incidental to an existing building. Any outside storage or repair shall be located within a designated area and screened from general public view as well as from abutting properties of a differing zoning classification.

(20) Transportation service facilities, including but not limited to: taxicab, limousine, and bus. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.

(Ord. of 4-23-96; Ord. of 9-9-97; Ord. of 5-25-99; Ord. of 8-12-03)

Sec. 10-3-97. Uses permitted by special use permit.

[The following uses are permitted by special use permit only:]

(1) Restaurants.

(2) Convenience stores.

(3) Business and professional offices.

(4) Financial institutions and offices.

(5) Bus terminals.

(6) Communications towers more than one hundred twenty-five (125) feet in height.

(7) Radio, television or recording studios.

(8) Reducing required parking areas to permit fewer than the required number of parking spaces for any use, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.

(9) Religious, educational, charitable or benevolent institutional uses which do not provide housing facilities.

(10) Recreational and leisure time activities.

(11) Structures in excess of seventy-five (75) feet.

(12) Communication facilities necessary for public safety purposes, including towers up to two hundred

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(200) feet in height, which may include rental of space to private communication service providers.
(13) Boarding and rooming houses, complying with conditions as defined under article F, and limited in occupancy by one (1) person per designated bedroom unless otherwise specified within the special use permit.
(Ord. of 4-23-96; Ord. of 6-24-97; Ord. of 4-24-01; Ord. of 2-24-04; Ord. of 1-25-05, § 2; Ord. of 7-26-05; Ord. of 1-10-06, § 2; Ord. of 5-26-09(1))

Sec. 10-3-98. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

Minimum setback:

Front--Thirty (30) feet.

Side--Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Rear--Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Maximum building height:

Seventy-five (75) feet unless superseded by special use permit 10-3-97(12).

Structures not designed for human occupancy but which may provide accessory uses such as parking facilities shall be restricted to seventy-five (75) feet in height.

(Ord. of 4-23-96; Ord. of 1-25-05, § 2; Ord. of 1-10-06, § 2; Ord. of 11-25-08(2))

Sec. 10-3-99. Other regulations.

- (a) Provisions for off-street parking and loading regulations within this district shall comply with article G.
- (b) Provisions for parking lot landscaping regulations within this district shall comply with article G also.
- (c) Unless modified or superseded by other ordinances which directly apply to the general health, safety and welfare of the public, all accessory storage or products to be processed or being processed, and supplies and waste materials resulting from such work, shall be completely enclosed within the structures of permanent and durable construction. In addition, all on-site refuse containers or refuse storage facilities shall be located within a designated area and screened from general public view by means appropriate to the appearance of this district.

(Ord. of 4-23-96)

ARTICLE S. I-1 INSTITUTIONAL OVERLAY DISTRICT

Sec. 10-3-100. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "I-1" institutional overlay district.

(Ord. of 4-23-96)

Sec. 10-3-101. Purpose of district.

This district is intended to provide for orderly development of certain nonprofit institutional uses such as colleges and universities, hospitals, offices of nonprofit organizations, community assembly uses and institutions providing for the shelter and care of persons.

(Ord. of 4-23-96)

Sec. 10-3-102. Overlay applicability.

This district is created as a special overlay district to be superimposed on base districts by approval of city council. Boundaries of this overlay are as shown on the zoning district map and may be revised by city council through the rezoning process. Uses permitted by this overlay district are in addition to any use permitted by right in the underlying zoning classification. Dimensional and density regulations provided

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herein are intended to supplement those permitted in the underlying zoning classification, not to be more restrictive than those of the underlying zoning classification. When requirements of the underlying zoning classification and the overlay appear to be in conflict, the least restrictive shall apply.
(Ord. of 4-23-96)

Sec. 10-3-103. Uses permitted by right.

[The following uses are permitted by right:]

- (1) Civic, educational, charitable, scientific, religious, and philanthropic uses for a public or nonprofit institutional organization.
- (2) Facilities operated by a public or nonprofit institutional organization for the shelter and care of persons.
- (3) Eating and drinking establishments, mercantile establishments and personal service establishments which are a part of and supportive of an otherwise permitted use in the I-1 district.
- (4) Hospitals, medical care or health related facilities operated by a public or nonprofit institutional organization.
- (5) Accessory buildings and uses clearly incidental to the above.
- (6) Public uses.

(Ord. of 4-23-96)

Sec. 10-3-104. Uses permitted only by special use permit.

None.

(Ord. of 4-23-96)

Sec. 10-3-105. Area and dimensional regulations.

Except as provided in article T, or the overlay applicability section, or as part of an approved master plan, the following area and dimensional regulations shall apply. The minimum district size set herein cannot be reduced. For purposes of the district, contiguous means properties touching one another or located directly across a street from one another.

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Minimum district size: Five (5) contiguous acres under the ownership of a single entity or affiliates under its control.

Maximum density: No maximum density

| Use | MINIMUM FEET | | | | | MAXIMUM | |
|--|--------------|-----------|------------|-----------|-----------|---------|-------------|
| | * Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Height Feet |
| Institutional Building, including hospitals and other medical care facilities (other than residential) | 80 | 120 | 30 | 10 | 30 | 3** | 40** |
| Institutional Residential Buildings, with maximum occupant capacity of: | | | | | | | |
| Less than 50 | 60 | 100 | 30 | 10 | 25 | 3 | 40 |
| 50 to 100 | 160 | 180 | 60 | 60 | 60 | 3 | 45 |
| 101 to 150 | 200 | 240 | 90 | 90 | 90 | 4*** | 50*** |
| More than 150 | 250 | 280 | 120 | 120 | 120 | 4*** | 50*** |

*Measured at the point of required front setback line.

**Provided the institutional property consists of one (1) or more contiguous tracts of land aggregating at least ten (10) acres, an institutional building (other than a residential building) may be of a height of up to fifty (50) feet, provided the front, side and rear yard setbacks are not less than seventy-five (75) feet from a lot line adjacent to any residentially zoned district not overlaid with the institutional district. For the purposes of this district, a residential district is considered to be adjacent if it is directly abutting the institutional zone or on the opposite side of a street having a right of way width of sixty (60) feet or less. With respect to any institutional building, the height limitation provided above shall not apply to any accessory structure or architectural feature which is incidental to the use of such building.

***Provided the institutional property consists of one (1) or more contiguous tracts of land aggregating at least ten (10) acres, an institutional building may be of a height of up to sixty (60) feet and up to five (5) stories, provided the front, side and rear yard setbacks are not less than four (4) times the height of the building from a lot line adjacent to any residentially zoned district not overlaid with the institutional district. For the purposes of this district, a residential district is considered to be adjacent if it is directly abutting the institutional zone or on the opposite side of a street having a right-of-way width of sixty (60) feet or less.

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(Ord. of 4-23-96; Ord. of 11-25-08(2))

Sec. 10-3-106. Master plan requirements.

(a) The master plan process provides a mechanism for an applicant to request approval of a master plan for development that may include uses which do not meet the dimensional or parking requirements. Prior to obtaining approvals for otherwise required site plans and building permits for permitted uses which do not meet dimensional regulations (including any required separation between buildings) or parking requirements, the property owner shall submit, to the city planner, for review by planning commission and city council, a master plan for development of all or part of the I-1 district. Submission of this plan will also be required prior to consideration for inclusion of additional property in the I-1 district. Minimum district size cannot be reduced through the master plan concept or any other mechanism.

(b) The plan shall include a scaled graphic representation of the following information together with necessary explanatory material:

(1) The boundaries of the area involved and the ownership of properties contained therein, as well as all existing public streets and alleys within and adjacent to the site.

(2) The location and use of all existing buildings on the site, as well as the approximate location, height, dimensions and general use of all proposed buildings or major additions to existing buildings.

(3) The location of all existing parking facilities and the approximate location of all proposed parking facilities, including the approximate number of parking spaces at each location and all existing and proposed means of vehicular access to parking areas and to public streets and alleys. Any proposed changes to public streets and alleys within and adjacent to the site shall also be shown on the plan.

(4) The general use of major existing and proposed open spaces within the site and specific features of the plan such as screening, buffering or retention of natural areas, which are intended to enhance compatibility with adjacent and nearby properties.

(Ord. of 4-23-96)

Sec. 10-3-107. Action of planning commission.

(a) The planning commission shall recommend to the city council a master plan for development in the I-1 district only after holding a public hearing in accordance with the requirements of article T of this chapter and only upon finding that the development as shown on the master plan is in compliance with the requirements of the I-1 district and other applicable provisions of this chapter and upon finding that such development will not be detrimental to the public health, safety and welfare of the neighborhood and will not be in conflict with the policies and principles of the city's comprehensive plan; and that adequate public services are available.

(b) The planning commission shall submit its recommendation to the city council together with a copy of the master plan.

(c) Amendments to the master plan may be accomplished by the same procedure as an original application.

(Ord. of 4-23-96)

Sec. 10-3-108. Compliance with master plan.

Upon approval of the master plan by the city council following a public hearing thereon, site plans or applications for building permits shall be approved only if deemed to be in compliance with the provisions of this chapter and substantially in accordance with the submitted master plan or subsequent amendment thereto.

(Ord. of 4-23-96)

ARTICLE T. MODIFICATIONS AND ADJUSTMENTS

Sec. 10-3-109. Purpose.

The regulations set forth in this article modify, supplement or qualify the regulations appearing elsewhere

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in this chapter.
(Ord. of 4-23-96)

Sec. 10-3-110. General modifications.

- (a) Architectural treatments and functional elements, including, but not limited to: chimneys, moldings, rain gutters, downspouts, roof eaves, buttresses and bay windows, shall be allowed to project not more than two (2) feet, eight (8) inches into the required yard setback, provided they do not include additional floor space.
- (b) Fire escapes and other required means of egress from any building may project into a required yard setback, provided that they are uncovered and unenclosed.
- (c) Terraces, patios, uncovered porches, decks, uncovered swimming pools and other similar features may project into a side or rear yard provided these projections are at least five (5) feet from any adjoining property.
- (d) An open, unenclosed and uncovered porch or paved terrace may project into the front yard for a distance of not more than one-third (1/3) of the front setback.
- (e) Uncovered and/or unenclosed service station fuel pumps and pump islands, and all other volatile pump systems, may be located within the front setback requirements, provided they are not less than fifteen (15) feet from any property line or easement, and not less than fifty (50) feet from the property line of any dwelling or dwelling district. Covered or enclosed pump operations are not classified as accessory buildings and shall comply with standard principal building setbacks, for the district concerned.
- (f) Where a lot of record is less than sixty (60) feet in width as measured at the point of required front setback, each required side setback for internal lot lines may be reduced to not less than five (5) feet unless otherwise superseded by building regulations.
- (g) All unimproved lots parcels of land situated within the R-2 Residential District (article I) and which were not improved with permanent structures prior to the effective date of this chapter, but upon which a plan of development had been submitted to and reviewed by the planning commission prior to the effective date of this chapter, may be improved by building permits issued in compliance with the requirements for R-2 districts as found within the preceding zoning ordinance as last amended March 13, 1984, upon final approval of plans by the planning commission and city council. Said parcels subject to these conditions, however, shall be improved by issuance of building permits within a period not to exceed two (2) years from the effective date of this chapter and thereafter shall comply with applicable R-2 requirements of this chapter.

Exception: Unimproved parcels designed, approved and recorded pursuant to a plan of development under townhouse regulations shall not be limited to the two (2) years required for commencement of construction or to the applicable requirements of this chapter.

(Ord. of 4-23-96; Ord. of 7-23-02)

Sec. 10-3-111. Height.

The height regulations heretofore established will be adjusted in the following cases:

- (1) The height limitations of this chapter shall not apply to the architectural features such as chimneys, spires, etc., and necessary accessory structures such as water towers, smoke-stacks and conveyors which are incidental to uses permitted in nonresidential districts.
- (2) The limitations on the number of stories shall not comply to buildings and structures not intended for human occupancy, but heights shall be governed by technical and environmental standards.
(Ord. of 4-23-96)

Sec. 10-3-112. Setbacks.

The setback regulations heretofore established shall be adjusted in the following cases:

- (1) On through lots the rear yard of a lot improved with a main building shall be subject to building setback regulations for front yards.
- (2) Corner lots shall provide a setback equal to the required front setback for all yards adjoining a public street; provided, however, that the setback regulations shall not reduce the buildable width of a lot to less than fifty (50) percent of lot width and measured at the point of required setback line.
- (3) Where the frontage on one side of a street between two (2) intersecting streets is improved with

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principal structures having setbacks less than the required setback permitted, the required setback may be reduced to the average setback so established, or the average setback of the two (2) nearest principal structures on the same side of the street.
(Ord. of 4-23-96; Ord. of 8-26-03)

Sec. 10-3-113. Townhouses.

This section is intended to supplement and modify the regulations for townhouses as stated in residential district regulations R-3, R-4, and R-5.

- (1) Each townhouse group of more than four (4) attached units shall have a minimum side yard setback of fifteen (15) feet for each end unit. Groups of four (4) or less attached units shall comply with minimum side yard setback regulations for end units as otherwise required for the zoning district in which they are built.
- (2) End lots created by the planning of end units for a group of more than four (4) attached units, but end lots not considered corner lots, shall be planned to ensure a minimum separation of thirty (30) feet between the townhouse group and all other buildings on adjoining lots.
- (3) The exterior facades of all townhouse units shall be varied in material and design so that no more than two (2) abutting units will have the same architectural appearance and front yard setback depth. Varied front yard setbacks shall not be less than two (2) feet offset from adjoining units as measured at the principal foundation line of each unit, and no setback distance shall be less than the required minimum.
- (4) Approval of the plan of development for any townhouse complex wherein certain units are designed to the exact minimum conditions permitted for lot size and/or setbacks shall suggest that variances for future alterations or additions will not be supported by the city.
- (5) If a townhouse development includes common areas in addition to the townhouse lots, the common areas shall be maintained by, and be the sole responsibility of, the developer-owner of the townhouse development until such time as the developer-owner conveys such common areas to a nonprofit corporation owner whose number shall be all of the individual owners of the townhouses in the townhouse development. This land shall be conveyed to and be held by such nonprofit corporate owner solely for the recreational and parking purposes of the owners of the individual townhouse lots in the development. In the event of such conveyance by the developer-owner to a nonprofit corporate owner, deed restrictions and covenants shall provide, among other things, that any assessment and/or charges for cost of maintenance of such common areas shall constitute a prorated lien upon the individual townhouse lots. Maintenance of townhouse exteriors, lawns, special lighting and drainage for common areas shall be provided in a manner so as to discharge any responsibility for the city.
- (6) Townhouse developments that include rear yard garage structures, detached from the principal structures, are permitted when approved as part of a preliminary plat or site plan and shall be designed such that each garage unit shall occupy no more than fifty (50) percent of the rear yard area and shall be separated by no less than fifteen (15) feet from the principal structure. No more than two (2) abutting garage units shall have the same rear setback depth; varied rear yard setbacks shall not be less than two (2) feet offset from adjoining garage units as measured at the principal foundation line. The minimum building setback requirement for such garages shall be five (5) feet, except that it shall be zero (0) with respect to interior side lot lines and thirty (30) feet from any lot line that abuts a public street.
(Ord. of 4-23-96; Ord. of 2-22-05, § 1; Ord. of 11-25-08(4))

Sec. 10-3-114. Accessory buildings.

- (a) *In residential districts.* Accessory building in residential districts may be built in a rear yard, but such accessory building shall not occupy more than thirty (30) percent of the required rear yard and shall not be less than five (5) feet from any interior side or rear lot line. Detached garages in townhouse developments are excluded from these requirements (per section 10-3-113). No accessory buildings or garages may be placed within the limits of a recorded easement or required fire lane.
- (b) *In business and industrial districts.* Accessory buildings in business and industrial districts on sites which abut a residential district shall be held to the same setbacks required of principal buildings.
- (c) *Principal building required.* No accessory building shall be constructed on the premises of a building site which has not been improved with a principal building and no accessory building shall be used unless

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the principal building is in use.

(d) *Location in setbacks in residential districts prohibited.* No accessory building in a residential district shall be located within the existing setback between a principal building and public street.

(e) *Responsibility of owners to confirm covenants.* It is the responsibility of the owner to confirm if any covenants exist on their property which regulate accessory buildings.

(f) Bus shelters, as defined, are exempt from all regulations within this section except that no shelter shall be located within the limits of a recorded easement or required fire lane.

(Ord. of 4-23-96; Ord. of 2-22-05, § 1; Ord. of 11-25-08(5))

Sec. 10-3-115. Walls and fences.

Walls and fences, beams and similar items which may restrict passage or vision or simply enhance private property may be located within required yards and defined by building setbacks except as restricted herein:

(1) No walls or fences within front yards shall exceed a height of six (6) feet as measured from grade at the front property line.

(2) No walls or fences or similar items other than landscaping within side and rear yards shall exceed an average height of six (6) feet; except that such items, when attached to a principal building, may not exceed eight (8) feet in height when clearly incidental to a function of the building rather than site improvement.

(3) In business and industrial districts walls and fences which are clearly used for safety or security purposes may be superseded by other height regulations.

(4) In all use districts, except a B-1 central business district, walls and fences, hedgerows and other dense landscaping and other items which occur on corner lots, which exceed three and one-half (3 1/2) feet in height, and present an obstruction to vision, shall be reduced in height or relocated at least twenty (20) feet from the intersection of right-of-way lines.

(5) In all residential districts walls and fences which adjoin property lines shall not be electrified, barbed or otherwise secured in a manner inappropriate or dangerous to the neighborhood. Such restrictions may be waived within customary agricultural areas which are isolated from residential buildings.

(6) Walls and fences shall not impede sight distance at entrances and street intersections, in accord with the DCSM.

(7) Walls, fences and other enclosures for special uses, such as swimming pools, transformers and substations, shall be restricted by other regulations which shall supersede this section.

(Ord. of 4-23-96)

ARTICLE U. AMENDMENTS AND CHANGES

Sec. 10-3-116. Powers of council generally; schedule of public hearings.

(a) This article, including the zoning map, may be amended by ordinance adopted by city council, following review and recommendations by the Harrisonburg Planning Commission. Amendments to this article may include changes of the regulations and/or of the zoning districts as established on the zoning map.

(b) The planning commission will have its public hearings during a regular monthly meeting, if applications are pending. The city council will hold public hearings at such time and places as it may deem necessary.

(Ord. of 4-23-96)

Sec. 10-3-117. Initiation of changes.

A proposed change of district or text may be initiated by the city council on its own motion, or on recommendation by the planning commission, or by petition of the property owner or owners within the territory proposed to be rezoned. In the latter case, the petition shall be addressed to city council but shall be filed with the city planner in the department of planning and community development. The city planner shall transmit the petition to the planning commission for recommendation. All petitions shall be in writing and shall specify:

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(1) The nature and extent of the change desired, with appropriately detailed "plan of development" showing what kind of development will be established;

a. Reasons for seeking the change; and

b. The names and addresses, as far as practical, of the property owners affected by the change.

(2) The petition requesting the proposed change and required fee shall be filed in the department of planning and community development in sufficient time to be placed on the planning commission agenda. The plan of development for the proposed change and all data pertaining thereto shall be filed in the office of the city planner in sufficient time for conducting staff review prior to consideration by the planning commission. (See article D, Site Plan Review.)

(Ord. of 4-23-96)

Sec. 10-3-118. Fee for request for amendment.

Each request for amendment to this chapter, including the zoning map and for amendment to the comprehensive plan, shall be accompanied by a check for three hundred twenty-five dollars (\$325.00) plus twenty-five dollars (\$25.00) per acre made payable to the city.

In addition, if the rezoning or comprehensive plan amendment requires a traffic impact analysis review by the Virginia Department of Transportation (VDOT), then all additional fees for those reviews shall be made payable to the Virginia Department of Transportation. If the rezoning or comprehensive plan amendment requires a traffic impact analysis review, only by the city, then one thousand (\$1,000.00) shall be made payable to the city. These applications shall not be considered accepted until the TIA has been reviewed.

(Ord. of 4-23-96; Ord. of 5-28-02, § 3; Ord. of 7-22-08(5))

Sec. 10-3-119. Procedure.

(a) All proposed amendments to this chapter shall be transmitted by the city planner to the planning commission for recommendation and report prior to action thereon by the city council. Before making any recommendation on a proposed amendment, the planning commission shall give notice of a public hearing thereon, as set forth in section 15.1-431 of the Code of Virginia, 1950, as amended. Unless the proposal is withdrawn by letter or other formal notice before the hearing, the hearing shall be held at the time and place announced; provided however, that if the hearing is postponed, new public notice shall be given as set forth above. If the postponement is at the request of the applicant or otherwise the fault of the applicant, then the additional public notice shall be at the applicant's expense. Following each hearing, the planning commission shall adopt its recommendation, and shall present the proposed amendment to the city council, together with its recommendations and any appropriated explanatory materials. The failure of the planning commission to report to the city council within ninety (90) days after the close of the public hearing on the proposed amendment shall be deemed approval.

(b) Before approving and adopting any amendment to this chapter, the city council shall hold at least one public hearing thereon, after which the city council may make appropriate changes or corrections in the proposed amendments; provided, that no additional land may be zoned to a different classification than was contained in the public notice required by this section nor shall any land be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing as required by this section. The hearing shall be held at the time and place announced in the public notice. An affirmative vote of at least a majority of the members of city council shall be required to amend any provision of this chapter.

(c) The planning commission shall not recommend, nor shall the city council adopt, any amendment to this chapter until notice of intention to do so has been published once a week for two (2) successive weeks in a newspaper published or having general circulation in the city. Such notice shall specify the time, date and place of the hearing at which persons affected may appear and present their views. The second notice shall be published not less than six (6) days before the hearing.

(d) When a proposed amendment of this chapter involves a change in the zoning classification of twenty-five (25) or less parcels of land, then, in addition to the advertising as required in the preceding paragraph, written notice shall be given at least five (5) days before the hearing to the owner or agent of each parcel involved, and to the owners of all abutting property and property immediately across the street or road from the property affected. Notice sent by registered or certified mail to the last known

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address of such owner, as shown on the current real estate tax assessment books, shall be deemed adequate compliance with this requirement.

(e) *Posting of property.* Notwithstanding any advertising requirements imposed by the Code of Virginia, as amended, any property proposed for review due to a change of district or any public hearing as elsewhere specified in this article shall be posted for public notice as specified below. At least fourteen (14) days prior to the planning commission's public hearing on the pending application, the city shall erect on the subject property signs indicating the change proposed and a contact phone number for persons wanting more information regarding the public hearing/meeting. Such signs may not be removed until the city council has acted upon the application, and shall be removed no later than five (5) days thereafter. The city shall determine the number of signs required, placement, and type of posting; however, there shall be at least one sign posted along each public right-of-way abutting the property.

(Ord. of 4-23-98; Ord. of 5-28-02, § 4)

Sec. 10-3-120. Plan of development.

Each request for amendment to this chapter, including the zoning map, shall be accompanied by a "plan of development" for the property included in the request, and shall have been reviewed by all applicable city officials before submission to the planning commission. If the application for rezoning is granted following the required public hearing procedure outlined in section 10-3-105, the plan of development must be started within a period of two (2) years, and the proposed structure or structures, parking facilities, plantings and other landscaping must follow the plan of development introduced during the rezoning hearing. The planning commission will have a rehearing if the plan of development is not underway within two (2) years.

(Ord. of 4-23-98)

Sec. 10-3-121. Reconsideration of request.

No request for amendment to this chapter, including the zoning map, or substantially the same request shall be reconsidered within one year of the date acted upon by the city council.

(Ord. of 4-23-98)

Sec. 10-3-122. Withdrawal of application.

Applications for a change in zoning may be withdrawn from consideration before the first notice of a public hearing thereon has been published and fees refunded if no publication cost is incurred. Application for a change in zoning which are withdrawn after the end of the public hearing shall be considered as denied for the purpose of one-year limitation or reconsideration as provided in section 10-3-107.

(Ord. of 4-23-98)

Sec. 10-3-123. Conditional zoning.

(a) *Purpose.* Where competing and incompatible uses conflict, traditional zoning methods and procedures are sometimes inadequate. In such cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time to recognize effects of change. It is the purpose of this section to provide a zoning method authorized under section 15.1-491, Code of Virginia 1950, as amended, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community even though said conditions may not be generally applicable to land similarly zoned. While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner or operator, and the provisions of this section shall not be used for purpose of discrimination in housing.

(b) *Proffer in writing.* As part of a petition for rezoning or amendment of the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the city council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case; provided, that:

(1) The rezoning itself must give rise to the need for the conditions;

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(2) Such conditions shall have a reasonable relation to the rezoning;

(3) Such conditions shall not include a cash contribution to the city;

(4) Such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in the subdivision ordinance;

(5) No condition shall be proffered that is not related to the physical development or physical operation of the property; and

(6) All such conditions shall be in conformity with the comprehensive plan.

For the purpose of this chapter, "proffered conditions" shall be interpreted to include written statements, development plans, profiles, elevation and/or other demonstrative materials. Materials of whatever nature and intended as conditions shall be annotated with the following statement signed by the owner or owners of the subject property:

"I (we) hereby proffer that the development of the subject property on this application shall be in strict accordance with the conditions set forth in this submission."

Once proffered and accepted as part of an amendment to the zoning ordinance such conditions shall continue in full force and effect until a subsequent amendment changes the zoning in the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(c) *Review and revision of proffered conditions.* Additional conditions or modified conditions may be proffered by the applicant during or subsequent to the public hearing before the planning commission; provided, however, that after proffered conditions are signed and made available for public review and the public hearing before the city council has been advertised (whether or not jointly held with the planning commission) no change or modification to any condition shall be approved without a second advertised public hearing thereon.

After the city council public hearing has been advertised or commenced, should additional or modified conditions be proffered by the applicant, which conditions were discussed at the public hearing before the planning commission, then a second public hearing need be held only before the city council before the application and the modified conditions can be approved.

Should additional conditions be proffered by the applicant at the time of the public hearing before the city council, which conditions were not addressed at the public hearing before the planning commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the planning commission, the application shall be the subject of a second public hearing before both the planning commission and the city council, which hearing may be either separately or jointly held.

(d) *Annotation of zoning map.* The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.

(d) *Enforcement of conditions.* The administrator shall be vested with all necessary authority on behalf of the city council to administer and enforce conditions attached to such rezoning or amendment to the zoning map, including:

(1) The ordering in writing of the remedy of any noncompliance with such conditions;

(2) The bringing of legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding; and

(3) Requiring a guarantee, satisfactory to the city council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the city council, or agent thereto, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy or building permits, as may be appropriate.

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(f) *Conformity of development plans.* Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with all proffered statements, plans, profiles, elevations or other demonstrative materials, and no development shall be approved by any city official in the absence of said substantial conformity. For the purpose of this section, "substantial conformity" shall mean that conformity which leaves a reasonable margin for adjustment to final engineering data but conforms with the general nature of the plans, profiles, elevations and other demonstrative materials presented by the applicant.

(g) *Change of approved conditions.* Once conditions have been approved, and there is cause for an amendment which would be in substantial conformity with the proffered conditions, then an application shall be filed for an amendment. If the amendment concerns an approved site plan, such application shall include the submission requirements for a site plan set forth in article D. Such amendment shall be the subject of public hearings in accordance with the requirements for a new application.

(h) *Review of the administrator's decision.* Any zoning applicant or any other person who is aggrieved by the decision of the administrator pursuant to the provisions of paragraph (e) above may petition the city council for the review of the decision of the administrator. All such petitions for review shall be filed with the zoning administrator and with the clerk of the city council within thirty (30) days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.

(i) *Recordation of proffered conditions.* A certified copy of all ordinances accepting proffered conditions, together with a duly signed copy of the proffer statement, shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court within thirty (30) days of council approval.

(Ord. of 4-23-96; Ord. of 7-24-01)

ARTICLE V. SPECIAL USE PERMITS

Sec. 10-3-124. Purpose and intent.

Special permit uses are those which, if not specially regulated, may have an undue impact on or be incompatible with other uses of land within or adjacent to a given zoning district. These uses either have unusual characteristics, or have characteristics which may be different from those of their immediate surroundings. Upon the granting of a special use permit by city council, these uses may be allowed to locate or expand within designated zoning districts under the standards, controls, limitations, performance criteria, restrictions and other regulations of this article.

(Ord. of 4-23-96)

Sec. 10-3-125. Review standards; special use permits.

(a) A special use permit shall only be approved if the proposed use is permitted as a special use in the applicable zoning district.

(b) All applications for special use permit shall be reviewed using the following criteria:

(1) The proposed use shall be consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district.

(2) The proposed use shall be adequately served by essential public services such as streets, drainage facilities, fire protection, and public water and sewer facilities.

(3) The proposed use all be designated, sited, and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods.

(Ord. of 4-23-96)

Sec. 10-3-126. Special conditions.

(a) In granting any special use permit, the city council may impose such conditions as it believes necessary to accomplish the objectives of this chapter and to assure that the proposed use will conform with the requirements of this section and will continue to do so. Such standards may include, but need not

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be limited to:

(1) Additional open space, landscaping or screening requirements.

(2) Additional yard requirements.

(3) Special lighting requirements.

(4) Time limitations on hours of operation.

(5) Additional off-street parking and loading requirements.

(6) Additional utility, drainage and public facility requirements.

(7) Additional right-of-way and public access requirements.

(8) Additional requirements to ensure compatibility with the Comprehensive Plan.

(9) Conditions for renewal, extension, expiration, and/or revocation of special use permit.

(b) Unless otherwise specified by city council as a condition of approval, the height limits, yard requirements, lot area and other requirements shall be the same as for other uses in the district in which the proposed special use is to be located.

(c) The city council may specify time limits or expiration dates for a special use permit, including provisions for periodic review and renewal.

(Ord. of 4-23-96)

Sec. 10-3-127. Application requirement for special use permit.

(a) The procedures for application for a special use permit are the same as those prescribed for changes and amendments in article U, except that all applications shall include the following additional information:

(1) A preliminary site plan if any changes to the existing site are proposed.

(2) A description of the proposed use including, where applicable, the hours of operation and the proposed number of employee/patrons.

(3) When requested by the planning commission or the city council, the following information shall be provided by the applicant:

a. Elevations and floor plans of the proposed buildings.

b. A traffic impact analysis, showing the effect of traffic generated by this project on surrounding streets and neighborhoods.

(b) If the request for a special use permit has been denied by city council, a request in substantially the same form shall not be resubmitted with one year of the date of denial.

(Ord. of 4-23-96; Ord. of 11-25-08(6))

Sec. 10-3-128. Procedure.

(a) No special use permit shall be approved unless the proposal has been reviewed by the planning commission as provided in article U of this chapter. Following planning commission's public hearing, the planning commission shall prepare and by motion adopt its recommendations, which may include changes in the applicant's original proposal resulting from the hearing, and shall transmit such recommendations, together with any explanatory material, to the city council. Failure of the planning commission to report within ninety (90) days after the close of its public hearing shall be deemed approval, unless the proposed special use permit has been withdrawn by the applicant prior to the expiration of such time period or the time period has been extended by mutual agreement by the city and the applicant.

(b) Before approving a special use permit, the city council shall hold at least one public hearing as provided in article U of this chapter after which the city council may make appropriate changes to or impose appropriate conditions upon the proposed special use. Nothing herein shall preclude the city council from holding a joint public hearing with the planning commission.

(c) A concurring vote of a majority of the members of city council shall be required to approve a special use permit.

(d) Whenever a petitioner seeks both an amendment to the zoning ordinance and a special use permit for the same property, both or all related applications may be made and processed jointly.

(e) *Posting of property.* Notwithstanding any advertising requirements imposed by the Code of Virginia, as amended, any property proposed for review due to a special use permit or any public hearing as

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elsewhere specified in this ordinance shall be posted for public notice as specified below. At least fourteen (14) days prior to the planning commission's public hearing on the pending application, the city shall erect on the subject property signs indicating the special use permit proposed and a contact phone number for persons wanting more information regarding the public hearing/meeting. Such signs may not be removed until the city council has acted upon the application, and shall be removed no later than five (5) days thereafter. The city shall determine the number of signs required, placement, and type of posting; however, there shall be at least one sign posted along each public right-of-way abutting the property. (Ord. of 4-23-96; Ord. of 5-28-02, § 5; Ord. of 11-25-08(6))

Sec. 10-3-129. Expansion or enlargement of a special use.

A special use may not be enlarged or expanded unless approved by city council through the approval procedure outlined in this article, or unless the expansion or enlargement was specifically authorized in the original approval. (Ord. of 4-23-96)

Sec. 10-3-130. Expiration and revocation.

- (a) Unless a time limit is specified for a special use permit, the same shall be valid for an indefinite period of time, except that if the use or activity should cease for any reason for a continuous period of two (2) years or more, the special permit shall automatically terminate without notice and become null and void.
- (b) The approval of a new special use permit shall be required prior to any subsequent reinstatement of the use.
- (c) Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.
- (d) If the special use or construction has not commenced in accordance with the above provisions, then the special use permit shall automatically expire without notice and become null and void.
- (e) A special use permit shall be revocable upon written order of the city council at any time because of the failure of the owner or operator of the use covered by the permit to observe all requirements with respect to the maintenance and conduct of the use and all conditions in connection with the permit that were imposed in issuing the same. A revoked permit shall become null and void. (Ord. of 4-23-96)

Sec. 10-3-131. Existing special uses.

Any use listed as requiring approval as a special use, and which use legally exists at the effective date of the regulations of this article, shall be considered a nonconforming use unless it has been approved as a special use by the city council. (Ord. of 4-23-96)

ARTICLE W. BOARD OF ZONING APPEALS

Sec. 10-3-132. Composition.

There shall be a board of zoning appeals (hereinafter called the "board") which shall consist of five (5) members, each to be a resident of the city and each to be appointed by the circuit court of the city for terms of five (5) years, except the original appointments shall be made for such terms that the term of one member shall expire each year. When approved by the court, one member shall be a member of the city planning commission. Vacancies shall be filled by such court for the unexpired portion of the term. A member may be removed by such court for cause, upon written charges and after a public hearing. Each member shall receive such compensation as the city council may authorize for attendance at each regular or called meeting of the board. (Ord. of 4-23-96)

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Sec. 10-3-133. Organization.

The board shall elect one of its members as chairman and one of its members as vice chairman. The chairman shall preside at all meetings of the board and in the chairman's absence the vice-chairman shall preside. The city manager, or designated agent, shall appoint a recording secretary whose duty it shall be to keep the minutes and other records of the actions and deliberations of the board and perform such other ministerial duties as the board shall direct. The recording secretary shall receive such compensation as the city council may authorize for attendance at each regular or called meeting of the board. (Ord. of 4-23-96)

Sec. 10-3-134. Procedure.

The board shall adopt such rules of procedure as it may deem necessary in order to carry into effect the provisions of this chapter, said rules to be in writing and copies available to the public at the office of the zoning administrator and the recording secretary of the board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in the chairman's absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The recording secretary shall keep minutes of the board's proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of the board's examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. A quorum shall consist of three (3) board members, one which shall be either the chairman or the vice-chairman. The board shall submit a report of its activities to the city council at least once each year. (Ord. of 4-23-96)

Sec. 10-3-135. Powers.

The board of zoning appeals shall have the following powers and duties:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter.
- (2) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship; provided, that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done as hereinafter provided.
- (3) To hear and decide applications for interpretation of the zoning district map where there is any uncertainty as to the location of a district boundary.
- (4) To determine, in cases of uncertainty, of the district classification of any use not specifically named in these regulations; provided, however, such use shall be in keeping with uses specifically permitted in the district in which such use is to be classified. (Ord. of 4-23-96)

Sec. 10-3-136. Variances.

Subject to the provisions of this article, the board shall have the power to grant the following variances:

- (1) A variance in the yard and lot area requirements in any district as to relieve practical difficulties or particular hardships in cases when a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant; provided, that all variances shall be in harmony with the intended spirit and purpose of this chapter.
- (2) No variance shall be authorized by the board unless it finds:

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- a. That the strict application of this chapter would produce undue hardship.
 - b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- (3) No such variance shall be authorized except after notice and hearing as required by section 15.1-431 of the Code of Virginia, 1950, as amended.
- (4) No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
- (5) In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
- (Ord. of 4-23-96)

Sec. 10-3-137. Conditions attached to approvals.

Where the board is authorized to decide appeals, and where the board is authorized to approve variances, such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- (1) Amount, direction and location of outdoor lighting.
 - (2) Amount of location of off-street parking and loading space.
 - (3) Connected or disconnected with other buildings.
 - (4) Exits or entrances, doors and windows.
 - (5) Paving, shrubbery, landscaping, ornamental or screening fences, walls or hedges, or security fences.
 - (6) Time of day or night for operating.
 - (7) No store fronts.
 - (8) Control or elimination of smoke, dust, gas, noise, vibration caused by operations.
 - (9) Requirements for termination of a use based on lapse of time or such other conditions as the board may specify.
 - (10) Such other conditions as are necessary as prescribed by law.
- (Ord. of 4-23-96)

Sec. 10-3-138. Amendment of variance.

The procedure for amendment of a variance already approved, or the request for a change of conditions attached to an approval, shall be the same as for the new application, except that, where the administrator determines the change to be minor relative to the original approval, he may transmit the same to the board with the original record without requiring that a new application be filed.

(Ord. of 4-23-96)

Sec. 10-3-139. Procedure on applications and appeals.

- (a) *Application for variances.* An application to the board for a variance in which the board has original jurisdiction under this chapter may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the recording secretary of the board on forms which shall be provided for the purpose in accordance with rules which shall be adopted by the board. All information including maps and plans required by such forms, or otherwise required by the board in order that it might be fully informed, shall be furnished by the applicant. The recording secretary of the board shall place the matter on the agenda. Every application or appeal shall be advertised for a public hearing and said notice shall appear at least once a week for two (2) successive weeks in a newspaper having general circulation in the city. Such notice shall specify the time and place of hearing, not less than six (6) days nor more than twenty-one (21) days after the second advertisement and the property shall be posted in accordance with the rules of the board.
- (b) *Appeals.* An appeal to the board may be taken by any person aggrieved or by any officer,

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department, board or bureau of the city affected by any decision of the administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be taken within ten (10) days for a notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations, or within thirty (30) days after the entry of any other decision appealed from by filing with the administrator, and with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the recording secretary of the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate of stay would, in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record, on application and on notice to the administrator and on due cause shown.

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of such permit. The court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the board of zoning appeals.

(c) *Filing fees:*

(1) All persons, firms or corporations appealing to the board of zoning appeals shall be required to pay, at the time the application is submitted, one hundred seventy-five dollars (\$175.00) per request for expenses relative thereto.

(2) All persons, firms or corporations applying for variances under the provisions of this chapter or applying for an amendment of a variance already approved shall be required to pay, at the time the application is submitted, one hundred seventy-five dollars (\$175.00) per request for expenses relative thereto.

(3) The payment of such money in advance to the office of the administrator as specified shall be deemed a condition precedent to the consideration of such appeal, variance request or requested amendment to a variance already approved.

(d) *Hearing and decision.* The board shall, within thirty (30) days, fix a time and date for the hearing of the requested variance or appeal, give public notice thereof as required by law, as well as due notice to the parties in interest, and decide the same within thirty (30) days after the hearing date. Upon the hearing any party may appear in person, or by agent, or by attorney. In exercising its powers, the board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify, any order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variance from this chapter.

(e) *Posting of property.* Notwithstanding any advertising requirements imposed by the Code of Virginia, as amended, any property proposed for review due to a variance or any other public hearing as elsewhere specified in this section shall be posted for public notice as specified below. At least fourteen (14) days prior to the board of zoning appeals public hearing on the pending application, the city shall erect on the subject property signs indicating the variance proposed and a contact phone number for persons wanting more information regarding the public hearing/meeting. Such signs may not be removed until the board of zoning appeals has acted upon the application, and shall be removed no later than five (5) days thereafter. The city shall determine the number of signs required, placement, and type of posting; however, there shall be at least one sign posted along each public right-of-way abutting the property.

(Ord. of 4-23-96; Ord. of 5-28-02, § 6; Ord. of 10-27-09)

Sec. 10-3-140. Appeals to courts.

Appeals to courts from a decision of the board may be filed in the manner prescribed by law.

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(Ord. of 4-23-96)

ARTICLE X. SEVERABILITY, CONFLICT, EFFECTIVE DATE

Sec. 10-3-141. Severability.

If any section, paragraph, subdivision, clause, phrase or provision of this chapter shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this chapter as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.
(Ord. of 4-23-96)

Sec. 10-3-142. Repeal of conflicting ordinances.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.
(Ord. of 4-23-96)

Sec. 10-3-143. Effective date.

This chapter shall take effect and be in force from and after its adoption, the public welfare demanding it.
(Ord. of 4-23-96)
Secs. 10-3-144--10-3-159. Reserved.

ARTICLE Y. FLOODPLAIN ZONING DISTRICT*

*Editor's note: An ordinance adopted Jan. 8, 2008, amended Art. Y in its entirety, in effect deleting Art. Y and enacting a new Art. Y to read as set out herein. Former Art. Y pertained to similar subject matter and derived from an ordinance adopted Apr. 23, 1996.

Sec. 10-3-160. Purpose.

The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by

A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and,

D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. of 1-8-08)

Sec. 10-3-161. Applicability.

These provisions shall apply to all lands within the jurisdiction of the City of Harrisonburg, Virginia and identified as being in the 100-year floodplain by the Federal Insurance Administration.
(Ord. of 1-8-08)

Sec. 10-3-162. Compliance and liability.

A. No land shall hereafter be developed and no structure shall be located, relocated, constructed,

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reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this article and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this article.

B. The degree of flood protection sought by the provisions of this article is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.

C. Records of actions associated with administering this article shall be kept on file and maintained by the zoning administrator or their designated agent.

D. This article shall not create liability on the part of the City of Harrisonburg, Virginia, or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. of 1-8-08)

Sec. 10-3-163. Abrogation and greater restrictions.

This article supersedes any article currently in effect in flood-prone districts. However, any underlying article shall remain in full force and effect to the extent that its provisions are more restrictive than this article.

(Ord. of 1-8-08)

Sec. 10-3-164. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this article shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this article. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this article are hereby declared to be severable.

(Ord. of 1-8-08)

Sec. 10-3-165. Penalties.

A. Any person who fails to comply with any of the requirements or provisions of this article or directions of the zoning administrator or any other authorized employee of the City of Harrisonburg, Virginia, shall be guilty of a Class I misdemeanor and subject to the penalties thereof.

B. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of the article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance to permit it to continue, all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the city council to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

(Ord. of 1-8-08)

Sec. 10-3-166. Definitions

The following definitions shall apply in the interpretation and enforcement of this article:

Base flood. The flood having a one (1) percent chance of being equalled or exceeded in any given year.

Base flood elevation. The Federal Emergency Management Agency designated one hundred-year water surface elevation.

Basement. Any area of the building having its floor sub-grade (below ground level) on all sides.

Board of zoning appeals. The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator, or their designated agent, in the interpretation of this article.

Breakaway wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Development. Any manmade change to improved or unimproved real estate, including, but not limited to,

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buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and plers).

Encroachment. The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Flood or flooding.

(1) A general or temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters; or,

b. The unusual and rapid accumulation or runoff of surface waters from any source.

(2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)a. of this definition.

Floodplain or flood-prone area. Any land area susceptible to being inundated by water from any source.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Historic structure. Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. By an approved state program as determined by the Secretary of the Interior; or,

b. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR § 60.3.

Manufactured home. A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map on or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Recreational vehicle. A vehicle which is:

(1) Built on a single chassis;

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(2) Four hundred (400) square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and,

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Shallow flooding area. A special flood hazard area with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area. The land in the floodplain subject to a one (1) percent or greater chance of being flooded in any given year as determined in section 10-3-168 of this article.

Start of construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. of 1-8-08)

Sec. 10-3-167. Description of flood plain districts.

(a) **Basis of districts.** The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the flood insurance study (FIS) for the City of Harrisonburg, Virginia, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated February 6, 2008, as amended.

(1) The floodway district is delineated, for purposes of this article, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this district are specifically defined in Table six (6) of the above-referenced flood insurance study and shown on the accompanying flood boundary and floodway map or flood insurance rate map.

(2) The flood-fringe district shall be those areas identified as an AE zone on the maps accompanying the flood insurance study that are not included in the floodway district.

(b) **Overlay concept.**

(1) The floodplain districts described above shall be overlays to the existing underlying districts as shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

(2) If there is any conflict between the provisions or requirements of the floodplain districts and those of

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any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

(3) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.
(Ord. of 1-8-08)

Sec. 10-3-168. Official zoning map.

The boundaries of the special flood hazard area and floodplain districts are established as shown on the flood boundary and floodway map and/or flood insurance rate map which is declared to be a part of this article and which shall be kept on file at the City of Harrisonburg, Virginia, Department of Planning and Community Development offices.
(Ord. of 1-8-08)

Sec. 10-3-169. District boundary changes.

The delineation of any of the floodplain districts may be revised by the city council where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.
(Ord. of 1-8-08)

Sec. 10-3-170. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the zoning administrator, or their designated agent. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.
(Ord. of 1-8-08)

Sec. 10-3-171. Permit and application requirements.

(a) *Permit requirement.* All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the permit. Such development shall be undertaken only in strict compliance with the provisions of this article and with all other applicable codes and ordinances, as amended and the City of Harrisonburg, Virginia Subdivision Regulations. Prior to the issuance of any such permit, the zoning administrator, or their designated agent, shall require all applications to include compliance with all applicable state and federal laws.

(b) *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

- (1) For structures to be elevated, the elevation of the lowest floor (including basement).
- (2) For structures to be flood-proofed (nonresidential only), the elevation to which the structure will be flood-proofed.

(Ord. of 1-8-08)

Sec. 10-3-172. General standards.

In all special flood hazard areas the following provisions shall apply:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility

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equipment resistant to flood damage.

(4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including ductwork, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this article.

(10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this article, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

(11) No materials that are buoyant, flammable or explosive shall be stored in the one hundred-year floodplain unless they are properly anchored or flood proofed to preclude their causing damage to life and property.

(Ord. of 1-8-08)

Sec. 10-3-173. Specific standards.

In all special flood hazard areas where base flood elevations have been provided in the flood insurance study the following provisions shall apply:

(1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation or as otherwise required by the Uniform Statewide Building Code (USBC).

(2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than one (1) foot above the base flood elevation or as otherwise required by the USBC. Buildings located in the AE zone may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one (1) foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

(3) *Elevated buildings.* Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

a. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;

b. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

c. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

1. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding.
2. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
3. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

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4. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.
5. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
6. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- (4) **Standards for manufactured homes and recreational vehicles.**
 - a. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in subsection 10-3-172(a) and (b), and subsection (a).
 - b. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that
 1. The lowest floor of the manufactured home is elevated no lower than one (1) foot above the base flood elevation or as otherwise required by the USBC; or,
 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than thirty-six (36) inches in height above the grade;
 3. The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement;
 - c. All recreational vehicles placed on sites must either:
 1. Be on the site for fewer than one hundred eighty (180) consecutive days;
 2. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or,
 3. Meet all the requirements for manufactured homes in subsection (d).

Sec. 10-3-174. Additional standards for specific districts.

- (a) **The flood-fringe district.** The following additional provisions shall apply within the flood-fringe district:
 - (1) Notify, in riverine situations, adjacent communities and the department of conservation and recreation (floodplain management program) shall be notified prior to any alteration or relocation of a watercourse, and copies of such notifications shall be submitted to FEMA.
 - (2) Assume that the flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
 - (3) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (b) **The floodway district.** The following additional provisions shall apply within the floodway district:
 - (1) Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
 - (2) Development activities which increase the water surface elevation of the base flood are allowed, provided that the developer/applicant first applies -- with the City of Harrisonburg, Virginia endorsement -- for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency.
 - (3) If subsection 10-3-174(b)(1) or (2) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this article.
 - (4) The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

(Ord. of 1-8-08)

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Sec. 10-3-175. Standards for subdivision proposals.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage; and
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(Ord. of 1-8-08)

Sec. 10-3-176. Variances: factors to be considered.

In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (1) The showing of good and sufficient cause.
 - (2) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the one hundred-year flood elevation.
 - (3) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (4) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (5) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - (6) The importance of the services provided by the proposed facility to the community.
 - (6) The requirements of the facility for a waterfront location.
 - (7) The availability of alternative locations not subject to flooding for the proposed use.
 - (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
 - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - (12) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (13) Such other factors which are relevant to the purposes of this article.
- The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
- Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.
- Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief from exceptional hardship to the applicant.
- The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred-year flood elevation (a) increase the risks to life and property and (b) will result in increased premium rates for flood insurance.
- A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the federal insurance administrator.

(Ord. of 1-8-08)

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ARTICLE Z. UR-URBAN RESIDENTIAL DISTRICT

Sec. 10-3-177. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the "UR" Urban Residential District.
(Ord. of 11-27-01(1))

Sec. 10-3-178. Purpose of district.

This district is intended for medium-density and single-family development that is of an historic nature, located near the center of the city, together with certain governmental, educational, religious, recreational and utility uses subject to restrictions and requirements necessary to ensure compatibility with residential surroundings.
(Ord. of 11-27-01(1))

Sec. 10-3-179. Uses permitted by right.

The following uses are permitted by right:

- (1) Any use permitted by right in the R-1 single-family residential district.
- (2) Duplex dwelling units with limitations as required by area and dimensional regulations (section 10-3-181 below).
- (3) Dwelling units may be occupied by a family or not more than two (2) persons, except that such occupancy may be superseded by building regulations.
- (4) Accessory buildings and uses clearly incidental to the above. (Refer to section 10-3-114, Accessory Buildings.)
- (5) Public uses.
(Ord. No. 11-27-01(1); Ord. of 2-24-09(2))

Sec. 10-3-180. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Child day care centers.
- (2) Adult day care centers.
- (3) Home for the aged in which three (3) persons not of the immediate family are provided with food, shelter, and care for compensation.
- (4) Community buildings and facilities used for recreational, social, educational, and cultural activities, which are intended to benefit the residents of the subdivision.
- (5) Major family day home.
- (6) Bed and breakfast facilities in which (a) food service shall be limited to breakfast and light fare for room guests only and (b) having space available on premises for one (1) parking space for each guest room.
- (7) Communication facilities necessary for public safety purposes, including towers up to two hundred (200) feet in height, which may include rental of space to private communication service providers.
(Ord. No. 11-27-01(1); Ord. of 7-26-05)

Sec. 10-3-181. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

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| Lot area Sq. Ft. | MINIMUM FEET | | | | | MAXIMUM | |
|-------------------------|--------------|--------------|---------------|--------------|--------------|---------|----------------|
| | Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Height Feet |
| Single-Family: 7,000 | 60 | 100 | 25 | 5 | 20 | 3 | 35 |
| Duplex: 7,000/Unit | 30/Unit | 100 | 25 | 5 | 25 | 3 | 35 |

* Measured at the point of required front setback line
(Ord. No. 11-27-01(1); Ord. of 2-24-09(2))

Sec. 10-3-182. Other regulations.

- (a) Attached or detached private radio and television antennas, including dish antennas, shall not exceed the maximum height otherwise permitted in all districts and shall not be permitted in front yards.
Exception: Private amateur radio antennas intended for public service and emergency use may exceed the height otherwise established so long as the height is justified for proper radio communications.
- (b) Off-street parking regulations for all new buildings and uses permitted in this district are governed by article G.
- (c) Only one (1) principal dwelling or duplex dwelling may be constructed upon each subdivided parcel of land unless such land is proposed for a group housing project as defined.
- (d) Proposed group housing projects as permitted in this district, which rely on private refuse collection shall provide a designated point of collection with appropriate facilities. Said facilities shall be screened as may be required upon approval of the site plan.
(Ord. No. 11-27-01(1); Ord. of 3-24-09(1))

ARTICLE AA. R-P RESIDENTIAL-PROFESSIONAL DISTRICT

Sec. 10-3-183. General.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the regulations for the R-P, Residential-Professional Overlay.
(Ord. No. 11-27-01(2))

Sec. 10-3-184. Purpose of district.

This district is intended to provide flexibility in the use of buildings located at the outer limits of traditional residential areas. Professional offices and other uses that respect both the residential nature and aesthetic character of the adjacent neighborhood are permitted. Uses permitted by special use may be subject to restrictions and requirements to ensure compatibility with residential surroundings.
(Ord. No. 11-27-01(2))

Sec. 10-3-185. Overlay applicability.

This district is created as a special overlay district to be superimposed on base districts by approval of city council. Boundaries of this overlay are as shown on the zoning district map and may be revised by city council through the rezoning process. Uses permitted by this overlay district are in addition to any use herein intended to supplement those permitted in the underlying zoning classification, not to be more restrictive than those of the underlying zoning classification. When requirements of the underlying zoning classification and the overlay appear to be in conflict, the least restrictive shall apply.
(Ord. No. 11-27-01(2))

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Sec. 10-3-186. Uses permitted by right.

The following uses are permitted by right:

- (1) Professional offices.
- (2) Mixed use of a single dwelling unit and permitted nonresidential with lot area of fourteen thousand (14,000) square feet or more, providing two (2) off-street parking spaces for the single dwelling and parking requirements as established in article G. Off-street parking for the nonresidential use are provided on site.

(Ord. No. 11-27-01(2))

Sec. 10-3-187. Uses permitted only by special use permit.

[The following uses are permitted by special use permit only:]

- (1) Museums, galleries and art studios, which may include instructional rooms and incidental sales where permitted.
- (2) Mixed use of a single dwelling unit and permitted nonresidential with lot area of thirteen thousand nine hundred ninety-nine (13,999) square feet or less, providing two (2) off-street parking spaces for the single dwelling and parking requirements as established in article G. Off-street parking for the nonresidential use are provided on site.
- (3) Occupancy, other than permitted by right, of not more than four (4) persons (except such occupancy may be superseded by building regulations), provided one (1) off-street parking space per tenant is provided on site.

(Ord. No. 11-27-01(2))

Sec. 10-3-188. Area and dimensional regulations.

Except as provided in article T, the following area and dimensional regulations shall apply:

| Lot area Sq. Ft. | MINIMUM FEET | | | | | MAXIMUM | |
|---|----------------|--------------|---------------|--------------|--------------|---------|-------------|
| | * Lot Width | Lot Depth | Front Yard | Side Yard | Rear Yard | Stories | Height Feet |
| Professional Offices: 5,000 | 50 | 100 | 25 | 5 | 25 | 3 | 35 |
| Museums, Galleries, and Art Studios: 5,000 | 50 | 100 | 25 | 5 | 25 | 3 | 35 |
| Mixed Use**: | 50 | 100 | 25 | 5 | 25 | 3 | 35 |

* Measured at the point of required front setback line.

** As defined above under Section 10-3-180 (2) and 10-3-181 (2).

(Ord. No. 11-27-01(2))